

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Mr. Kurt A. Benshoof,
A.R.W. By and Through His Father, Mr.
Kurt A. Benshoof, Brett Fountain, Urve
Maggitti,

Plaintiffs,

v.

Case No. 2:24-cv-00808-JHC

ANDREA CHIN, et al.
Defendants.

JUDICIAL NOTICE
Fed. R. Evid. 201

Co-Plaintiff, Urve Maggitti respectfully requests this Court take judicial notice, Fed. R. Evid. 201(c)(2) of the facts on the record that are not subject to reasonable dispute because it: Fed. R. Evid. 201(b) **(1)** is generally known within the trial court's territorial jurisdiction, and **(2)** can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

Take notice that there is no legally valid vexatious litigant order issued by Federal District Court against Co-Plaintiff Kurt Benshoof.

I. ORDER 2:23-cv-01392-JNW

1. Kurt Benshoof is Plaintiff in Case No. 2:23-cv-01392-JNW

2. Defendants in Case No 2:23-cv-01392-JNW are: MOSHE ADMON, DANIEL AUDERER, JUSTIN BOOKER, FREYA BRIER, CITY OF, SEATTLE, NATHAN CLIBER, ZACHARY COOK, BENJAMIN COOMER, ANITA CRAWFORD-WILLIS, JENNY DURKAN, JAMES ERVIN, DAVID ESTUDILLO, MARSHAL FERGUSON, MICHAEL FOX, COREY FOY, AMY FRANKLIN-BIHARY, WILLIAM GATES, III, STEVEN GONZALEZ, TYLER GOSLIN, WILLIE GREGORY, OWEN HERMSEN, JAY INSLEE, DAVID KEENAN, GABRIEL LADD, DANEIL LENTZ, MAGALIE LERMAN, MARY LYNCH, SARAH MACDONALD, ANTHONY MARINELLA, RICARDO MARTINEZ, BRADLEY MOORE, KATRINA OUTLAND, JESSICA OWEN, PCC NATURAL MARKETS, KYLE REKOFKE,

STEVEN ROSEN, BLAIR RUSS, UMAIR SHAH, SPROUTS FARMERS MARKET, MICHAEL THURSTON, JARED WALLACE, SANDRA WIDLAN.

3. Presiding Judge - in Case No. 2:23-cv-01392-JNW - Judge Jamal N Whitehead.
4. Date Case Filed: 09/07/2023
5. Date Case Terminated: 06/28/2024 - Order terminating the case [Dkt. 245].
6. Notice of Appeal filed on 7/02/2024. [Dkt. 247]. See attached EXHIBIT A
7. MOTION Vexatious Litigant Order Against Plaintiff Kurt A. Benshoof filed on 7/ 16/2024. [Dkt. 250].¹ See attached EXHIBIT B
8. On 02/11/2025, court issued an order declaring Plaintiff Benshoof *vexatious* litigant. [Dkt. 264]. See attached EXHIBIT C

II. ORDER Case No. 2:23-cv-01829-JNW

9. Kurt Benshoof is Defendant and Plaintiff/Counter Claimant in Case No. 2:23-cv-01829-JNW
10. Plaintiffs/ Counter Defendant in Case No. 2:23-cv-01829-JNW are: SEATTLE SCHOOL DISTRICT NO 1, NATHAN L. CLIBER, SARAH E. SPIERLING MACK, GREGORY C. NARVER, JESSICA R. OWEN, BLAIR M. RUSS.
11. Presiding Judge - in Case No. 2:23-cv-01829-JNW - Judge Jamal N Whitehead.
12. Date Case Filed: 11/28/2023
13. Date case Terminated: 07/19/2024 - Order terminating the case [Dkt. 67, 68].
14. Notice of Appeal filed on 8/21/2024. ² [Dkt. 72]. See attached EXHIBIT D
15. On 01/15/2025 Kurt Benshoof filed MOTION to Vacate [Dkt.75] Order [Dkt. 67, 68].
16. On 01/24/2025 Counter Defendants Sarah E. Spierling Mack, Gregory C. Narver filed RESPONSE in opposition [Dkt. 77]. See attached EXHIBIT E.
17. On 01/30/2025 Counter Defendant Nathan L. Cliber filed ³ [Dkt. 78]]. See attached

¹ "MOTION Vexatious Litigant Order Against Plaintiff Kurt A. Benshoof , filed by Defendants Faye Chess, City of Seattle, Benjamin Coomer, Anita Crawford-Willis, Ann Davidson, Jenny Durkan, Adam Eisenberg, Willie Gregory, Gabriel Ladd, Matthew Lentz, Mary Lynch, Katrina Outland, Jerome Roache, Soheila Sarrafan, David Sullivan, Jordan Wallace." [Dkt. 250].

² Ninth Circuit (24-5188)

³ "COUNTERCLAIM DEFENDANT NATHAN CLIBER'S JOINDER OF COUNTERCLAIM DEFENDANTS MACK AND NARVER'S RESPONSE TO COUNTERCLAIM PLAINTIFFS' MOTIONS TO VACATE AND FOR IN CAMERA REVIEW" [Dkt. 78]

EXHIBIT F

18. On 04/04/2025, court issued an ORDER [Dkt. 82] denying Benshoof's motion to vacate. See attached EXHIBIT G

III. Effect Of Notice Of Appeal On District Court Jurisdiction

19. District court jurisdiction ends with filing of notice of appeal. "This Court has long held that the taking of an appeal within the prescribed time is "mandatory and jurisdictional." *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 61, 103 S.Ct. 400, 74 L.Ed.2d 225 (1982) (*per curiam*) (internal quotation marks omitted); accord, *Hohn v. United **2364 States*, 524 U.S. 236, 247, 118 S.Ct. 1969, 141 L.Ed.2d 242 (1998); *Torres *210 v. Oakland Scavenger Co.*, 487 U.S. 312, 314–315, 108 S.Ct. 2405, 101 L.Ed.2d 285 (1988); *Browder*, 434 U.S., at 264, 98 S.Ct. 556." *Bowles v. Russell*, 551 U.S. 205, 209–10, 127 S. Ct. 2360, 2363–64, 168 L. Ed. 2d 96 (2007)

20. "The filing of a notice of appeal is an event of jurisdictional significance; it confers jurisdiction on the Court of Appeals and divests the district court of its control over those aspects of the case involved in the appeal. Fed. R. App. P. 4(a)." *Evans v. Synopsys, Inc.*, 34 F.4th 762 (9th Cir. 2022)

21. Motion for vexatious litigant designation was filed after Notice of Appeal filing, stripping District Court from its jurisdiction. See attached EXHIBITS E, F and G for reference.

IV. Violation of Due Process

A- Ringgold-Lockhart v. Cnty. of Los Angeles

22. A vexatious litigant designation is typically reserved for those who repeatedly file frivolous lawsuits or abuse judicial resources. Kurt Benshoof's litigation history does not meet this threshold under binding ninth circuit precedent.

23. When district courts seek to impose pre-filing restrictions, they must: (1) give litigants notice and "an opportunity to oppose the order before it [is] entered"; (2) compile an adequate record for appellate review, including "a listing of all the cases and motions that led the district court to conclude that a vexatious litigant order was needed"; (3) make substantive findings of frivolousness or harassment; and (4) tailor the order narrowly so as "to closely fit the specific vice

encountered.” *Id.* at 1147–48.” *Ringgold-Lockhart v. Cnty. of Los Angeles*, 761 F.3d 1057, 1062 (9th Cir. 2014)

24. Judge Whitehead failed to apply all four conditions in Benshoof's case:

(1) No meaningful “opportunity to oppose the order before it [was] entered”, on the contrary the court **DENIED** Benshoof's motion to stay the Court's decision on Defendants' motion for a vexatious litigant order until Benshoof is released from King County Jail.

(2) The pre-filing ORDER 2:23-cv-01392 expressly relied on ten prior filings to justify classifying Kurt Benshoof as a vexatious litigant. Those filings were either: (1) constitutionally protected, (2) dismissed on procedural grounds without a finding of frivolity or harassment, or (3) affirmatively screened and accepted under the in forma pauperis (IFP) standard.

Habeas' and Petitions for Injunctive Relief

Petitions for habeas or injunctive relief to enjoin Seattle and other defendants from their malicious prosecution of Plaintiff and his minor son.

- WDWA 2:22-cv-01281-LK, Voluntarily abandoned. No finding of bad faith or frivolity. Improper to count under *Ringgold-Lockhart*.
- WDWA 2:23-cv-00751-RAJ - Dismissed on jurisdictional grounds (domestic custody). Improper to count under *Slack*.
- WDWA 2:24-cv-1110-JNW - A habeas filing is a protected activity, and denial is procedural. Currently appealed.

Habeas Filed By Third Party

Habeas petition filed on behalf of incarcerated Kurt Benshoof who was held in jail incommunicado.

- WDWA 2:24-mc-43-JNW- Dismissed on procedural standing grounds, *Whitmore*, not on merits or bad faith. Judge Whitehead improperly utilized a constitutionally protected habeas access and is procedurally unacceptable under *Ex parte Hull*, 312 U.S. 546, 549 (1941) and *Slack v. McDaniel*, 529 U.S. 473 (2000).

Removal Under 28 U.S.C. § 1443

Filed for violation of Benshoof's federally protected civil rights while Benshoof was incarcerated.

- WDWA 2:24-mc-57-JNW, - Dismissed for failure to pay filing fee. This failure is a

jurisdictional defect, not an abuse of the court.

- WDWA 2:24-mc-60-JNW - Denied for lack of statutory basis and legal insufficiency, not abuse of the court. Currently appealed.

Order applied to Active Cases in Litigation in Mid-Stream

Vexatious litigation order issued against actively litigated cases in mid-stream.

- WDWA Case No. 2:24-cv-343-TL - Actively litigated at the time of vexatious litigant order. Dismissed with leave to amend. No finding of bad faith and improper to count as a vexatious litigant reason. Currently appealed.
- WDWA 2:24-cv-808-JHC - Actively litigated at this time. Non-frivolous under *Molski*.
- WDWA 2:23-cv-1392-JNW - Actively litigated at the time of vexatious litigant order.
- WDWA 2:24-cv-382-JNW - Actively litigated at the time of vexatious litigant order. Dismissed based on judicial immunity. Currently appealed.

(3) Court failed to make substantive findings of frivolousness or harassment;

(4) Court failed to tailor the order narrowly so as "to closely fit the specific vice encountered." *Id.* at 1147–48." *Ringgold-Lockhart v. Cnty. of Los Angeles*, 761 F.3d 1057, 1062 (9th Cir. 2014)

25. Therefore, under binding Ninth Circuit precedent, such filings may not be used to justify a pre-filing order. See *Ringgold Lockhart v. County of Los Angeles*, 761 F.3d 1057, 1061–63 (9th Cir. 2014); *De Long v. Hennessey*, 912 F.2d 1144, 1147–48 (9th Cir. 1990); *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1059 (9th Cir. 2007).

B. - Sec. & Exch. Comm'n v. Jarkesy:

26. Kurt Benshoof's litigation history does not meet this threshold, under *Sec. & Exch. Comm'n v. Jarkesy*.

"The question presented by this case—whether the Seventh Amendment entitles" a Plaintiff "to a jury trial when the" Court "seeks civil penalties for" first amendment right to petition court for redress of grievance which is "straightforward. Following the analysis set forth in *Granfinanciera, S. A. v. Nordberg*, 492 U.S. 33, 109 S.Ct. 2782, 106 L.Ed.2d 26, and *Tull v. United States*, 481 U.S. 412, 107 S.Ct. 1831, 95 L.Ed.2d 365, this action implicates the Seventh Amendment because" the Court is attempting to administratively

turn a common law actions into "public right" exception in violation of Constitution and Bill of Rights. "And the "public rights" exception to Article III jurisdiction does not apply, because the present action does not fall within any of the distinctive areas involving governmental prerogatives where the Court has concluded that a matter may be resolved outside of an Article III court, without a jury." *Sec. & Exch. Comm'n v. Jarkesy*, 603 U.S. 109, 110, 144 S. Ct. 2117, 2120, 219 L. Ed. 2d 650 (2024)

"The Court first explains why this action implicates the Seventh Amendment.

(1) The right to trial by jury is "of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right" has always been and "should be scrutinized with the utmost care." *Dimick v. Schiedt*, 293 U.S. 474, 486, 55 S.Ct. 296, 79 L.Ed. 603. When the British attempted to evade American juries by siphoning adjudications to juryless admiralty, vice admiralty, and chancery courts, the Americans protested and eventually cited the British practice as a justification for declaring Independence. In the Revolution's aftermath, concerns that the proposed Constitution lacked a provision guaranteeing a jury trial right in civil cases was perhaps the "most success[ful]" critique leveled against the document during the ratification debates. *The Federalist* No. 83, p. 495. To fix that flaw, the Framers promptly adopted the Seventh Amendment. Ever since, "every encroachment upon [the jury trial right] has been watched with great jealousy." *Parsons v. Bedford*, 3 Pet. 433, 28 U.S. 433, 7 L.Ed. 732. Pp. 2127 – 2129.

(2) The Seventh Amendment guarantees that in "[s]uits at common law ... the right of trial by jury shall be preserved." The right itself is not limited to the "common-law forms of action recognized" when the Seventh Amendment was ratified. *Curtis v. Loether*, 415 U.S. 189, 193, 94 S.Ct. 1005, 39 L.Ed.2d 260. Rather, it "embrace[s] all suits which are not of equity or admiralty jurisdiction, whatever may be the peculiar form which they may assume." *Parsons*, 3 Pet. at 447. That includes statutory claims that are "legal in nature." *Granfinanciera*, 492 U.S. at 53, 109 S.Ct. 2782" *Sec. & Exch. Comm'n v. Jarkesy*, 603 U.S. 109, 110, 144 S. Ct. 2117, 2120, 219 L. Ed. 2d 650 (2024).

27. Under *Mathews v. Eldridge*, 424 U.S. 319 (1976), procedural due process requires a balancing of (1) the private interest affected, (2) the risk of erroneous deprivation, and (3) the

government's interest. The administrative designation of Kurt Benshoof as a vexatious litigant severely impacts his fundamental right to petition the courts.

28. Benshoof's legal actions do not fall under definition of "*public rights*." "Such matters 'historically could have been determined exclusively by [the executive and legislative] branches.'" *Id.*, at 493, 131 S.Ct. 2594 (internal quotation marks omitted). No involvement by an Article III court in the initial adjudication of public rights claims is necessary. Certain categories that have been recognized as falling within the exception include matters concerning: the collection of revenue; aspects of customs law; immigration law; relations with Indian tribes; the administration of public lands; and the granting of public benefits. The Court's opinions governing this exception have not always spoken in precise terms. But "even with respect to matters that arguably fall within the scope of the 'public rights' doctrine, the presumption is in favor of Article III courts." *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 69, n. 23, 102 S.Ct. 2858, 73 L.Ed.2d 598 (plurality opinion). Pp. 2131 – 2134." *Sec. & Exch. Comm'n v. Jarkesy*, 603 U.S. 109, 112, 144 S. Ct. 2117, 2120, 219 L. Ed. 2d 650 (2024).

29. "Congress cannot 'conjure away the Seventh Amendment by mandating that traditional legal claims be ... taken to an administrative tribunal.'" 492 U.S. at 52, 109 S.Ct. 2782." .. "What matters is the substance of the suit, not where it is brought, who brings it, or how it is labeled. *Northern Pipeline Constr. Co.*, 458 U.S. at 69 n. 23, 102 S.Ct. 2858 (plurality opinion). Pp. 2135 - 2137." *Sec. & Exch. Comm'n v. Jarkesy*, 603 U.S. 109, 113, 144 S. Ct. 2117, 2120, 219 L. Ed. 2d 650 (2024)

30. Court effectively levied civil sanctions against Benshoof administratively for seeking first amendment right to petition court for redress of grievances - "a civil sanction that cannot fairly be said solely to serve a remedial purpose, but rather can only be explained as also serving either retributive or deterrent purposes, is punishment." *Austin v. United States*, 509 U.S. 602, 610, 113 S.Ct. 2801, 125 L.Ed.2d 488 (1993) (internal quotation marks omitted). And while courts of equity could order a defendant to return unjustly obtained funds, only courts of law issued monetary penalties to "punish culpable individuals." *Tull*, 481 U.S. at 422, 107 S.Ct. 1831. Applying these principles, we have recognized that "civil penalt[ies are] a type of remedy at common law that could only be enforced in courts of law." *Ibid.* The same is true here." *Sec. & Exch. Comm'n v. Jarkesy*, 603 U.S. 109, 123, 144 S. Ct. 2117, 2129, 219 L. Ed. 2d 650 (2024).

31. The Court imposed civil penalty, labelling Benshoof a vexatious litigant, in the perceived need to punish Benshoof - while the only victims are Besnhoof and his minor son- there are no other "victim(s)" to restore, "such considerations are legal rather than equitable." Sec. & Exch. Comm'n v. Jarkesy, (2024). "In sum, the civil penalties in this case are designed to punish and deter, not to compensate. They are therefore "a type of remedy at common law that could only be enforced in courts of law." *Ibid*. That conclusion effectively decides that this suit implicates the Seventh Amendment right, and that a [PLAINTIFF] would be entitled to a jury on these claims. See *id.*, at 421–423, 107 S.Ct. 1831." Sec. & Exch. Comm'n v. Jarkesy, 603 U.S. 109, 125, 144 S. Ct. 2117, 2130, 219 L. Ed. 2d 650 (2024).

"The Seventh Amendment's jury-trial right does not work alone. It operates together with Article III and the Due Process Clause of the Fifth Amendment to limit how the government may go about depriving an individual of life, liberty, or property. The Seventh Amendment guarantees the right to trial by jury. Article III entitles individuals to an independent judge who will preside over that trial. And due process promises any trial will be held in accord with time- honored principles. Taken together, all three provisions vindicate the Constitution's promise of a "fair trial in a fair tribunal." *In re Murchison*, 349 U. S. 133, 136 (1955)" Justices Gorsuch and Thomas Sec. & Exch. Comm'n v. Jarkesy, 603 U.S. 109, 125, 144 S. Ct. 2117, 2130, 219 L. Ed. 2d 650 (2024).

"Why should Article III, the Seventh Amendment, or the Fifth Amendment's promise of due process be any different? None of them exists to "protec[t] judicial authority for its own sake." *Oil States*, 584 U. S., at 356 (GORSUCH, J., dissenting). They exist to "protect the individual." *Bond v. United States*, 564 U. S. 211, 222 (2011)" Justices Gorsuch and Thomas, Sec. & Exch. Comm'n v. Jarkesy, 603 U.S. 109, 125, 144 S. Ct. 2117, 2130, 219 L. Ed. 2d 650 (2024).

32. The administrative Court Order violates Kurt Benshoof's Seventh Amendment right to a jury trial, when it imposed a severe legal penalty, a punishment, a designation of Benshoof as a vexatious litigant in a clear unconstitutional power grab to administratively strip Benshoof of his first amendment right to petition courts . Under Jarkesy v. SEC (2024), such penalties must be adjudicated by an Article III court with a jury trial, as required by the Seventh Amendment.

CONCLUSION

Accordingly, Co-Plaintiff Urve Maggitti respectfully request that the Court take Judicial Notice:

- Of the attached exhibits.
- Of the due process violations of the vexatious litigant order issued on motion filed after Notice of Appeal filing, stripping District Court from its jurisdiction.
- Of the due process violation under Ringgold-Lockhart v. Cnty. of Los Angeles and Sec. & Exch. Comm'n v. Jarkesy.

VERIFICATION

Pursuant to 28 U.S. Code § 1746 (1) 1, Urve Maggitti, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct

Respectfully submitted,

April 12, 2025



Urve Maggitti, Plaintiff
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**ACKNOWLEDGMENT
AFFIDAVIT
(Verification)**

STATE OF PENNSYLVANIA)
COUNTY OF CHESTER)

I, Urve Maggitti, the undersigned Affiant hereto, do hereby declare under penalties of perjury under the laws of the Commonwealth of Pennsylvania and the United States of America, that the foregoing accounting of facts are true and correct to the best of my current knowledge and belief.

I am over the age of 18 years of age, am a resident of the Commonwealth of Pennsylvania, have personal knowledge of the matters of this affidavit, and am capable of making such affidavit.

Pursuant to 28 U.S. Code § 1746 (1) I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 12 /2025

Signed: [Signature]
Urve Maggitti

Notary as JURAT CERTIFICATE

State of Washington COUNTY OF KING

BEFORE ME personally appeared Urve Maggitti who, being by me first duly sworn, executed the foregoing in my presence and stated to me that the facts alleged therein are true and correct according to her own personal knowledge.

[Signature]
Notary Public,

My commission expires: 03/09/2029

SAMARPAN MALLA
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STATE OF WASHINGTON
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MY COMMISSION EXPIRES
03/09/2029

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EXHIBIT A

Hon. Jamal N. Whitehead

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KURT A. BENSHOOF,
BRIANA D. GAGE,

Plaintiffs,

v.

MOSHE ADMON, *et al.*,

Defendants.

No. 2:23-cv-01392 JNW

PLAINTIFF'S NOTICE OF APPEAL
OF ORDER DISMISSING
PLAINTIFFS' FIRST AMENDED
COMPLAINT WITH PREJUDICE

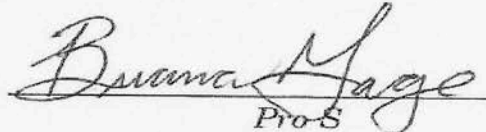
I. NOTICE

Plaintiffs hereby give notice to the Ninth Circuit Court of Appeals from the Court's Order Dismissing Plaintiffs' First Amended Complaint With Prejudice. (Dkt. #245) Respectfully submitted this second day of July 2024.

By



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CERIFICATION OF SERVICE

Plaintiff Kurt Benshoof hereby certifies that on July 2, 2024, he did electronically file the foregoing notice with the Clerk of Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record, and by email to attorneys for defendants and by email to the addresses listed below.

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PLAINTIFFS Notice of Appeal (Dkt 245)
WAWD No. 2:23-cv-01392-JNW
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DATED: July 2, 2024

Signed: s/ Kurt Benshoof
Kurt Benshoof, *Pro Se*

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF Western Washington

Form 1. Notice of Appeal from a Judgment or Order of a
United States District Court

U.S. District Court case number: 2:23-cv-1392-JNW

Notice is hereby given that the appellant(s) listed below hereby appeal(s) to
the United States Court of Appeals for the Ninth Circuit.

Date case was first filed in U.S. District Court: 09/07/2023

Date of judgment or order you are appealing: 06/28/2024

Docket entry number of judgment or order you are appealing: 245

Fee paid for appeal? (appeal fees are paid at the U.S. District Court)

☐ Yes ☐ No ☒ IFP was granted by U.S. District Court**List all Appellants** (List *each* party filing the appeal. Do not use "et al." or other abbreviations.)

Kurt A. Benshoof, pro se
Briana D. Gage, pro se

Is this a cross-appeal? ☐ Yes ☒ No

If yes, what is the first appeal case number?

Was there a previous appeal in this case? ☒ Yes ☐ No

If yes, what is the prior appeal case number? 24-952

Your mailing address (if pro se):

1716 N 128th Street

City: Seattle

State: WA

Zip Code: 98133

Prisoner Inmate or A Number (if applicable):

Signature s/ Kurt A. Benshoof

Date 07/02/2024

*Complete and file with the attached representation statement in the U.S. District Court**Feedback or questions about this form? Email us at forms@ca9.uscourts.gov*

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Form 6. Representation Statement

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form06instructions.pdf>

Appellant(s) (List *each* party filing the appeal, do not use “et al.” or other abbreviations.)

Name(s) of party/parties:

Kurt A. Benshoof, pro se
Brian D. Gage, pro se

Name(s) of counsel (if any):

Address: 1716 N 128th Street, Seattle, WA 98133

Telephone number(s): (206) 460-4202; (332) 260-7171

Email(s): kurtbenshoof@gmail.com; brianagage702@gmail.com

Is counsel registered for Electronic Filing in the 9th Circuit? ☒ Yes ☐ No

Appellee(s) (List *only* the names of parties and counsel who will oppose you on appeal. List separately represented parties separately.)

Name(s) of party/parties:

CITY OF SEATTLE; CITY OF SEATTLE OFFICIALS: Daniel Auderer,
Faye Chess, Anita Crawford-Willis, Benjamin Coomer, Ann Davison,
Jenny Durkan, Adam Eisenberg, Willie Gregory, Gabriel Ladd,

Name(s) of counsel (if any):

Dallas LePierre, WSBA #47391
Catherine Riedo, WSBA #50418

Address: 701 Fifth Avenue, Suite 2050, Seattle, WA 98104

Telephone number(s): (206) 684-8200

Email(s): dallas.lepierre@seattle.gov; catherine.riedo@seattle.gov

To list additional parties and/or counsel, use next page.

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

Continued list of parties and counsel: *(attach additional pages as necessary)*

Appellants

Name(s) of party/parties:

Name(s) of counsel (if any):

Address:

Telephone number(s):

Email(s):

Is counsel registered for Electronic Filing in the 9th Circuit? ☒ Yes ☐ No

Appellees

Name(s) of party/parties:

PUGET CONSUMERS CO-OP ("PCC"), Freya Brier, Zachary Cook,
CENTRAL COOP

Name(s) of counsel (if any):

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Matthew Coughlan, WSBA #56583

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Name(s) of party/parties:

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Name(s) of counsel (if any):

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**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

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Name(s) of counsel (if any):

Address:

Telephone number(s):

Email(s):

Is counsel registered for Electronic Filing in the 9th Circuit? ☐ Yes ☐ No

Appellee(s) (List only the names of parties and counsel who will oppose you on appeal. List separately represented parties separately.)

Name(s) of party/parties:

NATHAN L. CLIBER

Name(s) of counsel (if any):

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Michael C. Tracy, WSBA #51226

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Telephone number(s):

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sturner@grsm.com; mtracy@grsm.com

To list additional parties and/or counsel, use next page.

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Continued list of parties and counsel: *(attach additional pages as necessary)*

Appellants

Name(s) of party/parties:

Name(s) of counsel (if any):

Address:

Telephone number(s):

Email(s):

Is counsel registered for Electronic Filing in the 9th Circuit? ☐ Yes ☐ No

Appellees

Name(s) of party/parties:

BLAIR M. RUSS, pro se, WSBA #40374

Name(s) of counsel (if any):

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Name(s) of party/parties:

CITY OF SEATTLE OFFICIALS: Matthew Lentz, Mary Lynch, Katrina Outland, Jerome Roache, Soheila Sarrafan, David Sullivan, Jordan Wallace

Name(s) of counsel (if any):

Dallas LePierre, WSBA #47391
Catherine Riedo, WSBA #50418

Address: 701 Fifth Avenue, Suite 2050, Seattle, WA 98104

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Email(s): dallas.lepierre@seattle.gov; catherine.riedo@seattle.gov

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**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Form 6. Representation Statement

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Name(s) of party/parties:

Name(s) of counsel (if any):

Address:

Telephone number(s):

Email(s):

Is counsel registered for Electronic Filing in the 9th Circuit? ☐ Yes ☐ No

Appellee(s) *(List only the names of parties and counsel who will oppose you on appeal. List separately represented parties separately.)*

Name(s) of party/parties:

BIG 5 SPORTING GOODS, SPROUTS FARMERS MARKET

Name(s) of counsel (if any):

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James Johnson, WSBA #45750

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Continued list of parties and counsel: *(attach additional pages as necessary)*

Appellants

Name(s) of party/parties:

Name(s) of counsel (if any):

Address:

Telephone number(s):

Email(s):

Is counsel registered for Electronic Filing in the 9th Circuit? ☐ Yes ☐ No

Appellees

Name(s) of party/parties:

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Name(s) of counsel (if any):

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Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

EXHIBIT B

Hon. Jamal Whitehead

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KURT BENSHOOF,

Plaintiff,

v.

MOSHE ADMON, *et al.*,

Defendants.

No. 2:23-cv-01392-JNW

CITY OF SEATTLE'S MOTION FOR A
VEXATIOUS LITIGANT ORDER
AGAINST PLAINTIFF KURT A.
BENSHOOF

Defendant City of Seattle respectfully moves this Court for an order imposing prefil-
ing restrictions against Plaintiff Kurt A. Benshoof. In the past eighteen months Plaintiff has filed three
cases in federal court, and at least five cases in state court, based on the same related set of factual
allegations. After receiving unfavorable rulings, Plaintiff will then name the judge(s) and opposing
attorney(s) as defendants in his next case. For the reasons set forth below, imposing prefil-
ing restrictions on Plaintiff is authorized under the All Writs Act, 28 U.S.C. § 1651(a), and this extreme
remedy is necessary in this case to prevent Plaintiff's accelerating abuse of the court system.

CITY OF SEATTLE'S MOTION FOR A VEXATIOUS
LITIGANT ORDER AGAINST PLAINTIFF
No. 2:23-cv-01392-JNW - 1

Ann Davison
Seattle City Attorney
701 5th Avenue, Suite 2050
Seattle, WA 98104-7095
(206) 684-8200

I. INTRODUCTION

Since March 1, 2022, Plaintiff Kurt A. Benshoof has filed nine separate lawsuits against his ex-girlfriend Jessica Owen. Ms. Owen is the primary target of these lawsuits, but anyone associated with Ms. Owen also assumes the risk of future litigation. For example, each attorney who has represented Ms. Owen or a co-defendant is now named as an individual defendant in the present case. Similarly, Plaintiff is now suing eleven judges for judicial decisions that he disagrees with. Along with his ex-girlfriend, members of the bar, and judicial officers, Plaintiff has also named grocery store workers, police officers, and a smattering of public figures as defendants in this case and others.

The factual nucleus in each of these lawsuits is the same. Plaintiff and Ms. Owen were in a relationship for many years. They had a child together. A few years ago they split up. It appears the split was less than amicable. Familiar disputes over a vehicle, a residence, and child custody ensued. Ms. Owen unsuccessfully petitioned for a temporary restraining order, and then commenced a family court case. Plaintiff believes that he was unfairly treated in family court, claims that Ms. Owen lied under oath at various times during and before that proceeding and argues that the court-ordered parenting plan and custody arrangements impair his “verbal parentage contract” with Ms. Owen. Plaintiff believes that he is restrained by an unlawful domestic violence protection order issued during the family court proceeding.

Plaintiff also has strong feelings regarding COVID mask-mandates and COVID vaccines. Ms. Owen appears to feel differently. This is problematic for Plaintiff since Ms. Owen was awarded primary custody of their child in common. Plaintiff’s beliefs regarding the supremacy of “natural law” and religious freedom seem to have guided his actions and resulted in multiple exclusion orders from local grocery stores, arrests for repeatedly violating those orders, and dozens of pending counts for allegedly violating the domestic violence protection order. Plaintiff has multiple active bench

warrants in municipal court for refusing to appear.

Plaintiff's litigation tactics follow a common pattern. Plaintiff will file a lawsuit in state or federal court. He will then file another similar lawsuit shortly thereafter, sometimes while the first matter is still pending. After receiving an unfavorable ruling, Plaintiff will simply sue the judge(s) and defense attorney(s) in his next action. What began as a garden-variety dispute over child custody and vehicle possession has now blossomed into wide-ranging conspiracy allegations connecting private individuals to Bill Gates to the highest levels of the United States government. Furthermore, Plaintiff has shown a proclivity for improperly voluminous pleadings, and demonstrated that he will waste judicial resources by successively filing spurious demands for emergency equitable relief.

Other than his first suit on March 1, 2022, each of Plaintiff's cases have lacked legal merit and are frivolous. Moreover, by suing the attorneys who advocate against him, and the judges who rule against him, Plaintiff has demonstrated his improper vindictive motives.

II. LITIGATION HISTORY

Plaintiff's litigation history over the last eighteen months is described below:

1. March 1, 2022 – King County Sup. Ct. 22-2-02932-3 SEA.

Plaintiff filed this lawsuit against Jessica Owen seeking return of a Toyota FJ Cruiser that Plaintiff asserted was his pursuant to an oral contract. [Complaint]. Ms. Owen voluntarily transferred title to the vehicle to Plaintiff, and the matter was then dismissed by stipulation of the parties on May 20, 2022. [Stipulated Dismissal].

2. March 16, 2022 – KCSC 22-2-03826-8 SEA (consolidated with 22-2-15745-3 SEA).

Two weeks after filing the prior case, Plaintiff served Jessica Owen with a second complaint seeking \$500,000 in damages. [Complaint]. Plaintiff alleged that Ms. Owen had defrauded him out of an ownership stake in real property that he acquired through an oral contract with her. Ms. Owen

1 filed counterclaims, including a writ of ejectment, and the matter eventually proceeded to trial. On
2 June 2, 2023, King County Superior Court Judge Sandra Widlan entered findings of fact and
3 conclusions of law, issued an order ejecting Plaintiff from the property, and awarded monetary
4 damages to Ms. Owen in the amount of \$41,300.

5 On June 15 Plaintiff filed a notice of appeal. *See also Benshoof v. Owen*, No. 85465-8-I (Wash.
6 Ct. App. Div. 1) (2023).¹ The docket indicates that Plaintiff has not filed a designation of clerk's
7 papers, a statement of arrangements, a motion to extend time, or any other document.

8 3. July 18, 2022 – KCSC 22-2-11112-7 SEA.

9 Plaintiff filed an 85-page “Petition for Writ of Habeas Corpus” arguing that he was unlawfully
10 (and criminally) restrained from any contact with his son. [Petition for Writ]. The named defendants
11 were Jessica Owen, her significant other Magalie Lerman, her family law attorney Nathan Cliber,
12 King County Superior Court Judge David Keenan, King County Superior Court Commissioner Jason
13 Holloway, and Seattle Police Chief Adrian Diaz. *Id.* The primary grounds asserted by Plaintiff were
14 his disagreement with the decisions of Judge Keenan and Commissioner Holloway during the family
15 court proceedings. Plaintiff also took issue with Seattle police officers enforcing the family court
16 orders, and Ms. Owen’s decision to vaccinate their child in common against COVID-19.

17 King County Superior Court Judge Steve Rosen denied the Petition three days after it was
18 filed. [Order on Writ Petition].

19 4. September 9, 2022 – Western District of Washington 2:22-cv-01281-LK.

20 Less than two months after his state court writ petition was denied, Plaintiff filed a 295-page
21 complaint in federal court seeking emergency injunctive relief and attempting to bring the action on
22

23 ¹ Washington appellate cases, including all unsealed filings, are publicly available online at:
https://www.courts.wa.gov/appellate_trial_courts/?fa=atc.display_divs&folderID=div1&fileID=documentsearchportal.

1 behalf of himself and his minor son A.R.W. *See* 2:22-cv-01281-LK, Dkt. 1. Plaintiff supplied a
2 laundry list of defendants, including Jessica Owen, Chief Diaz, Judge Keenan, Governor Inslee, and
3 Anthony Fauci, along with a number of other Seattle-area judges, attorneys, and public figures. That
4 lengthy pleading described Plaintiff's myriad grievances with the family court proceedings, child
5 custody, Ms. Owen's attorneys, COVID-19 related orders, denial of service at private businesses for
6 refusing to wear a mask, active bench warrants in municipal court for Plaintiff's failure to appear on
7 criminal charges, and Seattle police officers' enforcement of local laws and court orders.

8 The Court denied Plaintiff's request for emergency relief on September 26, 2022, dismissed
9 the claims he improperly attempted to bring on behalf of minor A.R.W., and directed him to file an
10 amended complaint that complied with Fed. R. Civ. P. 8. *See, id.*, Dkt. 5. The Court took the time to
11 highlight for Plaintiff some of the infirmities in his complaint, explaining that Plaintiff "asserts
12 various state law claims without demonstrating that this Court has subject matter jurisdiction," that
13 Plaintiff could not bring a 42 U.S.C. § 1983 claim against federal or private actors, and that law
14 enforcement's "failure to do more in response to his complaints . . . did not violate his constitutional
15 rights." *Id.* at 4. The Court carefully described the "short and plain statement" pleading requirement
16 from Rule 8. *Id.* at 4-5. Finally, the Court informed Plaintiff why *Younger v. Harris*, 401 U.S. 37
17 (1971) precludes him from seeking an injunction that would interfere with pending state judicial
18 proceedings, *id.* at 5-6, and further noted "the *Rooker-Feldman* doctrine [also] 'prohibits a federal
19 district court from exercising subject matter jurisdiction over a suit that is a de facto appeal from a
20 state court judgment.'" *Id.* at 7 n. 2 (quoting *Moore v. Cty. of Butte*, 547 Fed. App'x 826, 829 (9th
21 Cir. 2013)).

22 Plaintiff declined the Court's invitation to file an amended complaint and the case was
23 accordingly dismissed. 2:22-cv-01281-LK, Dkt. 7.

1 5. September 28, 2022 – KCSC 22-2-15745-3 SEA (consolidated with 22-2-03826-8 SEA).

2 Perhaps unhappy with Judge King's order two days prior, and presumably sensing that his
3 pending state court action was also not going his way, Plaintiff commenced another new lawsuit by
4 simply recycling the same allegations that were then pending trial under 22-2-03826-8 SEA.
5 [Complaint]. The Superior Court subsequently consolidated these two cases into the preexisting cause
6 number. [Order Consolidating]. As noted above, Ms. Owen prevailed in that case and Plaintiff appears
7 to have his abandoned his appeal.

8 6. October 3, 2022 – KCSC 22-2-15958-8 SEA.

9 Less than a week after filing 22-2-15745-3, Plaintiff filed yet another complaint against
10 Jessica Owen, but this time added her attorney Mr. Cliber and her significant other Magalie Lerman
11 as defendants. [Complaint]. In this lawsuit Plaintiff alleged abuse of process and defamation, relying
12 on his familiar allegations regarding the family court case, the (now settled) dispute over the Toyota
13 FJ Cruiser, domestic violence protection orders, and COVID-19 masking requirements. *Id.* Plaintiff
14 further claimed that Ms. Owen and Ms. Lerman committed felony auto theft, Ms. Owen committed
15 perjury, and Mr. Cliber engaged in criminal money laundering. *Id.* ¶ 6.

16 That complaint marked the sixth time Plaintiff had sued Ms. Owen since March of that year,
17 and the third lawsuit he filed against her in less than a month. Plaintiff also effectively disqualified
18 her attorney Mr. Cliber by naming him as a defendant. Several new attorneys entered appearances for
19 the defendants and moved for expedited relief under the Washington State Uniform Public Expression
20 Protection Act. *See* RCW 4.105, *et seq.* King County Superior Court Judge Mashall Ferguson
21 dismissed Plaintiff's claims on February 2, 2023, and awarded to each defendant costs, attorney fees,
22 and \$10,000 in statutory damages. [2/2/2023 Order]. The court then granted defendants' joint motion
23 for an order restricting Plaintiff's abusive litigation. [3/31/2023].

1 Plaintiff sought review of Judge Ferguson's decisions and that appeal is currently pending.
2 *See Benshoof v. Cliber, et al.*, No. 85092-0-I (Wash. Ct. App.) (Div. 1) (2023). Plaintiff appears to be
3 pursuing that appeal and filed his opening brief on October 6. *See id.*

4 7. May 4, 2023 – Washington State Supreme Court 101964-5.

5 About a month after receiving the vexatious litigant order, Plaintiff filed a 134-page "Verified
6 Petition for Common Law Writ of Habeas Corpus" directly in the Washington State Supreme Court.
7 [Verified Petition]; *Benshoof v. Keenan, et al.*, No. 101964-5 (Wash. 2023). This appears to have
8 been in direct violation of the terms of Judge Ferguson's order. Plaintiff named Judge Keenan, Chief
9 Diaz, and Jessica Owen as respondents. *Id.* A commissioner dismissed Plaintiff's petition four days
10 after it was filed. [Ruling Dismissing].

11 8. May 22, 2023 – WDWA 2:23-cv-00751-RAJ.

12 Plaintiff, claiming again to represent both himself and his minor son A.R.W., retooled his
13 dismissed state court habeas petition and filed a similar "Verified Petition for Common Law Writ of
14 Habeas Corpus" in federal court. *See* 2:23-cv-00751-RAJ, Dkt. 1. Plaintiff again named Jessica
15 Owen, Judge Keenan, and Seattle Police Chief Adrian Diaz as the defendants. *Id.* Just like his other
16 dismissed and/or pending actions, Plaintiff complained about his family court case, child custody
17 arrangements, the protection order, various (now-expired) COVID-19 public health orders, active
18 bench warrants in municipal court for his repeated refusals to appear in court, and Seattle police
19 officers' enforcement of state and local laws. *Id.* Plaintiff also filed an emergency motion for a
20 temporary restraining order on June 8, which in turn prompted responses from the defendants who
21 appeared through counsel. *See id.*, Dkt. 15 through 21.

22 The Court dismissed that case with prejudice four days later. *See* Dkt. 22. The Court explained
23 that "federal district courts have no jurisdiction over child custody issues" and that "federal courts are

1 not courts of appeal from state decisions.” *Id.* at 2.

2 Plaintiff filed an emergency appeal on June 16. *See* Dkt. 24. Ten days later, Plaintiff filed an
3 emergency motion for an injunction pending appeal. *See Benshoof v. Keenan, et al.*, No. 23-35418,
4 Dkt. 2 (9th Cir.) (June 26, 2023). The Ninth Circuit denied that motion on June 28 and directed
5 Plaintiff to show why summary affirmance was not warranted. *Id.*, Dkt. 3. Plaintiff filed a “response
6 to order and motion for injunctive relief” on July 18, which respondents Judge Keenan and Ms. Owen
7 responded to on July 28. *See id.*, Dkts. 6 and 7. The docket does not reflect any subsequent action on
8 that case.

9 9. September 7, 2023 – WDWA 2:23-cv-01392-JNW.

10 This litigation history informs this action. In this case, Plaintiff filed the operative 280-page
11 complaint on September 19, 2023. *See* Dkt. 9. The named defendants here include Plaintiff’s usual
12 targets of Jessica Owen, Judge Keenan, Magalie Lerman, Mr. Cliber, and Chief Diaz. Additionally,
13 Plaintiff is trying to bring to court Judge Ferguson, Judge Rosen, and Judge Widlan (presumably for
14 ruling against him), and attorneys Moshe Admon, Anthony Marinella, and Kyle Rekofke (presumably
15 for defending their clients). Plaintiff also names Bill Gates, an assortment of other Seattle-area judges,
16 several police officers, and a number of private individuals including grocery store employees who
17 told him to leave when he refused to wear a mask.

18 Plaintiff attempts to bring a number of causes of action, including criminal racketeering and
19 conspiracy to deprive Plaintiff of his federal legal rights. *Id.* at 182-267. According to Plaintiff, these
20 claims all commonly arise from the snowballing tangle of injustice created by his unfair family court
21 case, COVID-19 public health orders, the COVID-19 vaccine, and a deepening institutional
22 conspiracy against him. Plaintiff has also made a series of requests for emergency equitable relief in
23 this case, filing a petition for a preliminary injunction on September 27, a petition for a second

1 preliminary injunction on September 29, a motion for a temporary restraining order on October 2, a
2 motion for a second temporary restraining order on October 3, and a motion for a third temporary
3 restraining order on October 4. *See* Dkt. 14, 15, 16, 20, and 23. This Court denied Plaintiff's three
4 motions for temporary restraining orders on October 6 because "the doctrine of *Younger* abstention
5 bars the Court from deciding Benshoof's claims and because he is unlikely to succeed on the merits
6 in any event." *See* Dkt. 29 at 2. Following the denial of these motions, the Plaintiff followed up by
7 filing three additional motions for temporary restraining orders largely identical to the denied
8 motions. *See* Dkt. 74, 129, and 158. Plaintiff appealed the denial of these motions, generally
9 accompanied by emergency motions for injunctive relief to the 9th Circuit, all of which have been
10 denied.

11 10. March 15, 2024 – WDWA 2:24-cv-382-JNW

12 Continuing his vexatious litigation, Plaintiff filed suit against Judge Keenan again in this
13 action raising First Amendment claims against the Judge. Having filed to proceed in forma pauperis,
14 which Motion was denied, the Plaintiff has a current pending Motion to disqualify the presiding
15 Judge.

16 11. June 7, 2024 – WDWA 2:24-cv-808-LK

17 Unhappy with the course of this litigation, Plaintiff has again filed a 91-page complaint
18 purportedly on behalf of himself and his minor child raising substantially the same arguments in this
19 proceeding while adding claims against Judge Whitehead related to the proceeding of this case.
20 Plaintiff then used the new case naming the presiding judge a Defendant as the basis for a renewed
21 Motion to Recuse in the instant proceeding. A Motion for Temporary Restraining Order was filed and
22 is fully briefed before the Court raising claims asserted before this Court in TRO's that have been
23 ruled upon already.

1 12. February 2, 2024 - 24-952

2 After the denial of his motions for temporary restraining order in 2:24-cv-808, the Plaintiff
3 filed an appeal with the 9th Circuit asking for the equitable relief requested in those motions from the
4 Appellate Court. The Plaintiff then filed a motion for expedited hearing on the case. The 9th Circuit
5 issued an order revoking the Plaintiff's in forma pauperis status for failure to raise a single non-
6 frivolous claim and for filing in bad faith. A dismissal for lack of standing followed.

7 13. April 2, 2024 – 24-1958 (9th Cir.)

8 Undeterred, Plaintiff filed an Emergency Petition for Writ of Mandamus requesting that the
9 9th Circuit enter an Order directing this Court to enter an order granting his new motions for temporary
10 restraining order. That Petition was summarily denied.

11 14. May 13, 2024 – 24-3053 (9th Cir.)

12 Plaintiff again filed a petition for writ of mandamus asking the 9th Circuit to enter an order directing
13 this Court to adjudicate his sixth motion for temporary restraining order. Plaintiff followed this with
14 a motion for injunction requesting that the 9th Circuit to grant the relief sought in his sixth motion for
15 temporary restraining order in this case. Plaintiff followed that with an emergency motion for
16 expedited hearing. That petition and motion were summarily denied and dismissed.

17 15. November 9, 2023 – 23-6090 (SCOTUS)

18 Plaintiff filed a petition for writ of habeas corpus directly with the Supreme Court requesting
19 essentially identical relief as was requested in this case. That petition was summarily denied without
20 opinion.

21 **III. ARGUMENT AND AUTHORITY**

22 The City of Seattle respectfully moves this Court to enter an order imposing reasonable and
23 narrowly tailored prefiling restrictions on Plaintiff Kurt A. Benshoof. Federal courts have the inherent

power “to regulate the activities of abusive litigants by imposing carefully tailored restrictions under appropriate circumstances.” *De Long v. Hennessey*, 912 F.3d 1144, 1147 (9th Cir. 1990) (quoting *Tripati v. Beaman*, 878 F.2d 351, 352 (10th Cir. 1989)); *see also Martin v. District of Columbia Court of Appeals*, 506 U.S. 1 (1992) (per curiam). This authority can include “enjoining litigants with abusive and lengthy histories” pursuant to the All Writs Act, 28 U.S.C. § 1651(a). *Id.*

Orders imposing prefiling restrictions are an extreme remedy because they directly impact the litigant’s right to access the courts. Vexatious litigant orders are disfavored and must comply with procedural and substantive requirements. Before imposing prefiling restrictions district courts must:

- (1) give litigants notice and an opportunity to oppose the order before it is entered; (2) compile an adequate record for appellate review, including a listing of all the cases and motions that led the district court to conclude that a vexatious litigant order was needed; (3) make substantive findings of frivolousness or harassment; and (4) tailor the order narrowly so as to closely fit the specific vice encountered.

Ringgold-Lockhart v. Cty. of Los Angeles, 761 F.3d 1057, 1062 (9th Cir. 2014) (quotations removed).

The first and second requirements are procedural, while the latter two are substantive. *Id.* The Ninth Circuit also uses the “helpful framework” created by a sister circuit “for applying the two substantive factors.” *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1058 (9th Cir. 2007) (citing *Safir v. U.S. Lines, Inc.*, 792 F.2d 19, 24 (2d Cir. 1986)). That framework describes five additional considerations:

- (1) the litigant’s history of litigation and in particular whether it entailed vexatious, harassing or duplicative lawsuits; (2) the litigant’s motive in pursuing the litigation, *e.g.*, does the litigant have an objective good faith expectation of prevailing?; (3) whether the litigant is represented by counsel; (4) whether the litigant has caused needless expense to other parties or has posed an unnecessary burden on the courts and their personnel; and (5) whether other sanctions would be adequate to protect the courts and other parties.

Ringgold-Lockhart, 761 F.3d at 1062 (quotations omitted). “In light of the seriousness of restricting litigants’ access to the courts, pre-filing orders should be a remedy of last resort.” *Id.*

1 To be vexatious a litigant's actions must be substantively frivolous or harassing. To be
2 frivolous, "[t]he plaintiff's claims must not only be numerous, but also be patently without merit."
3 *Molski*, 500 F.3d at 1059 (quoting *Moy v. United States*, 906 F.2d 467, 470 (9th Cir. 1990)). "As an
4 alternative to frivolousness, the district court may make an alternative finding that the litigant's filings
5 'show a pattern of harassment.'" *Ringghold-Lockhart*, 761 F.3d at 1064 (quoting *De Long*, 912 F.2d
6 at 1148). District courts should not immediately conclude that repetitious actions are harassing, but
7 "must instead discern whether the filing of several similar types of actions constitutes an intent to
8 harass the defendant or the court." *Id.* (quotations omitted).

9 The four-factor test described above is satisfied here. The first factor is met through notice of
10 this motion and providing Plaintiff with an opportunity to respond. *Molski*, 500 F.3d at 1058. The
11 second factor – compiling an adequate record – is satisfied by Plaintiff's other cases described in this
12 memorandum, and the excerpts from those cases submitted by the City as exhibits in support of this
13 motion. *See also, Harris v. Cty. of Orange*, 682 F.3d 1126, 1131-32 (9th Cir. 2012) (explaining that
14 under Fed. R. Evid. 201 "[w]e may take judicial notice of undisputed matters of public record, . . .
15 including documents on file in federal or state courts").

16 The third and fourth factors are substantive, and examined through the five considerations
17 provided in the Second Circuit's "helpful framework" quoted above. Plaintiff's lawsuits all share a
18 common factual origin (to wit, his disagreements with Ms. Owen). In each successive lawsuit Plaintiff
19 will add new defendants who "sided" with Ms. Owen (e.g., her attorneys, the various judges, and the
20 police who enforced the court's orders). Plaintiff's claims lack any legal basis and, quite plainly, there
21 is not an objective good-faith expectation of prevailing. *E.g., Mireles v. Waco*, 502 U.S. 9, 11-12
22 (1991) (explaining absolute judicial immunity); *Dennis v. Sparks*, 449 U.S. 24 (1980) (same).
23 Furthermore, Plaintiff has ignored the two other judges in the Western District who have explained:

1 a) *Younger* and *Rooker-Feldman* abstention, b) the lack of federal jurisdiction over state family law
2 proceedings; c) that § 1983 claims cannot be brought against private actors; and d) that the Rule 8
3 pleading standard requires short and plain statements. *See generally*, 2:22-cv-01281-LK; 2:23-cv-
4 00751-RAJ. And, in case 01281-LK, rather than accept Judge King's invitation to file a truncated
5 amended complaint, Plaintiff filed a new complaint in state court (22-2-15745-3, which simply
6 repeated the allegations in 22-2-03826-8), waited a year, and then filed the substantially similar 280-
7 page complaint in this case. Although Judge King appears to have avoided Plaintiff's ire, Plaintiff
8 attempted to name Judge Jones² as a defendant along with Chief Judge Estudillo and former Chief
9 Judge Martinez. Rather than following this Court's orders or procedural rules, or accepting this
10 Court's invitations to amend his complaints, Plaintiff will commence a new action and improperly
11 sues the disagreeable judge.

12 Attorneys, other than prosecutors, do not enjoy the same immunity afforded to judges. When
13 sued as a co-defendant in a new action, they may be ethically limited in continuing to represent their
14 (former) client. This impacts both the client and the attorney's profession. Plaintiff here has sued
15 seven individual attorneys for their courtroom advocacy, including one prosecutor. *See* Dkt. 9 at 15-
16 18. Each of the six named private attorneys represented either Ms. Owen, a co-defendant, or Ms.
17 Owen's former counsel. He has since amended the Complaint, adding additional prosecutors. *See*
18 Dkt. 47. Filing baseless lawsuits against lawyers for litigating cases is not a new behavior for Plaintiff,
19 and all signs indicate that it will continue. Indeed, Plaintiff starts off this case with a threatening
20 "Notice to Counsel" that concludes with the admonition "[v]iolate the trinity of truth, equity, and law
21 at your peril." Dkt. 9 at 9.

22
23 ² It appears that Plaintiff omitted Judge Jones from the caption but identifies him as a "respondent" in the pleading. *See*,
e.g., Dkt. 9 at 18.

1 Plaintiff numerous, successive, and concurrently filed lawsuits are not the product of
2 ignorance or lack of legal training. They are the product of Plaintiff's accelerating crusade against
3 Ms. Owen, and his vindictive abuse of the court system to exact retribution on those who dare to
4 disagree with him. The evolving panoply of defendants demonstrates Plaintiff's vexatious nature. The
5 harm and distress that this has likely caused to Ms. Owen seems obvious. Undoubtedly, it is also more
6 than triflingly inconvenient to her attorneys who have in turn retained counsel.

7 The City respectfully submits that an order stopping Plaintiff's abusive practices should be
8 entered in this case. It is unlikely, or at least unclear, that a monetary sanction would have any effect.
9 Given Plaintiff's demonstrated recalcitrance, it is also unlikely that any type of Rule 11 sanction in
10 this case could adequately protect the courts and other parties from Plaintiff's future abuse. The City
11 therefore requests the Court to issue an order that, at a minimum, requires Plaintiff to do the following
12 prior to commencing any new civil action in federal court:

- 13 1. Comply with any other vexatious litigant orders issued by any state or federal court that
14 impose prefiling restrictions on Plaintiff;
- 15 2. Identify all past or pending case(s) initiated by Plaintiff against the same defendant(s),
16 concisely state the past disposition or present posture of those cases, and succinctly describe
17 why the proposed new action involves different factual allegations; and
- 18 3. Obtain advance leave from the forum court to file the new action if Plaintiff seeks relief from
19 (i) any other civil proceeding to which Plaintiff is a party, (ii) COVID public health order(s),
20 (iii) any judicial officer's decision(s), or (iv) any active bench warrant(s) issued by any court.

21 The City submits that these conditions are reasonable, do not unduly restrict Plaintiff's right to
22 otherwise avail himself to the court system, and are narrowly tailored to Plaintiff's harmful abuse of
23 the court system.

///

The City files this motion understanding that undersigned counsel, and perhaps this Court, will likely be defendants in Plaintiff's next action. That likelihood increases the imperative of issuing the requested order and underscores why it is appropriate. Plaintiff's frivolous claims should not be re-litigated again.

ANN DAVISON
Seattle City Attorney

Attorney for Defendant City of Seattle, Jenny Durkan, Matthew Lentz, Katrina Outland, David Sullivan, Gabriel Ladd, Jordan Wallace, Mary Lynch, Willie Gregory, Faye Chess, Jerome Roache, Adam Eisenberg, Anita Crawford-Willis, Soheila Sarrafan, Ann Davison, and Benjamin Coomer

CERTIFICATE OF SERVICE

I certify that on the 16th day of July, 2024, I caused a true and correct copy of this document to be served on the following in the manner indicated below:

<p>Kurt A. Benshoof 1716 North 128th Street Seattle, WA 98133 & King County Correctional Facility Kurt Alden Benshoof B/A number 2024-008067 500 Fifth Ave. Seattle, WA 98104</p> <p><i>[Pro Se Plaintiff]</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> CM/ECF <input type="checkbox"/> ABC Legal Messengers <input type="checkbox"/> Faxed <input type="checkbox"/> Via Email: kurtbenshoof@gmail.com</p>
<p>Briana D. Gage 1716 North 128th Street Seattle, WA 98133</p> <p><i>[Pro Se Plaintiff]</i></p>	<p><input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> CM/ECF <input type="checkbox"/> ABC Legal Messengers <input type="checkbox"/> Faxed <input type="checkbox"/> Via Email: bgage025@gmail.com</p>
<p>Michael C. Tracy and Sarah N. Turner Gordon Rees Scully 701 Fifth Avenue, Suite 2100 Seattle, WA 98104 (206) 659-5135</p> <p><i>[Nathan Cliber]</i></p>	<p><input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> CM/ECF <input type="checkbox"/> ABC Legal Messengers <input type="checkbox"/> Faxed <input type="checkbox"/> Via Email: mtracy@grsm.com</p>
<p>Amy Franklin-Bihary 701 Fifth Avenue, Suite 4550 Seattle, WA 98104 (206) 624-4900</p> <p><i>[Pro Se Defendant]</i></p>	<p><input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> CM/ECF <input type="checkbox"/> ABC Legal Messengers <input type="checkbox"/> Faxed <input type="checkbox"/> Via Email: afb@wechslerbecker.com</p>
<p>Darren A. Feider & Matthew Coughlan Sebris Busto James 15375 SE 30th Place, Suite 310 Bellevue, WA 98007 (425) 454-4233</p>	<p><input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> CM/ECF <input type="checkbox"/> ABC Legal Messengers <input type="checkbox"/> Faxed <input type="checkbox"/> Via Email:</p>

1 2 3	<i>[Puget Consumers Co-op, Freya Brier, Zachary Cook, Central Co-op]</i>	dfeider@sbj.law , mcoughlan@sbj.law
4 5 6 7 8	James T. Yand & James Johnson Miller Nash LLP 605 Fifth Avenue S, Suite 900 Seattle, WA 98104 (206) 622-8484 <i>[Big 5 Sporting Goods & Sprouts Farmers Market]</i>	() U.S. Mail (X) CM/ECF () ABC Legal Messengers () Faxed () Via Email: james.yand@millernash.com , james.johnson@millernash.com cara.lowrance@millernash.com
9 10 11 12	Peggy Wu King County Prosecuting Attorney's Office 701 5th Avenue, Suite 600 Seattle, WA 98104 (206) 477-1120 <i>[King County and Judge David Keenan]</i>	() U.S. Mail (X) CM/ECF () ABC Legal Messengers () Faxed () Via Email: pwu@kingcounty.gov
13 14 15 16 17	Sarah S. Mack Pacific Law Group LLP 1191 Second Avenue, Suite 2000 Seattle, WA 98101 (206) 245-1700 <i>[Seattle Public Schools, Gregory Narver, and Justin Booker]</i>	(X) CM/ECF () ABC Legal Messengers () Faxed () Via Email: sarah.mack@pacificlawgroup.com
18 19 20 21	Blair M. Russ Tomlinson Bomszyk Russ 1000 Second Avenue, Suite 3660 Seattle, WA 98104 (206) 621-1871 <i>[Blair M. Russ]</i>	(X) CM/ECF () ABC Legal Messengers () Faxed () Via Email: bmr@tbr-law.com

/s/ Grace Selsor
Grace Selsor, Legal Assistant

Hon. Jamal N. Whitehead

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KURT A. BENSHOOF,

Plaintiff,

vs.

MOSHE ADMON, DANIEL AUDERER,
JUSTIN BOOKER, FREYA BRIER, CITY OF
SEATTLE, NATHAN CLIBER, ZACHARY
COOK, BENJAMIN COOMER, ANITA
CRAWFORD-WILLIS, JENNY DURKAN,
JAMES ERVIN, DAVID ESTUDILLO,
MARSHAL FERGUSON, MICHAEL FOX,
COREY FOY, AMY FRANKLIN-BIHARY,
WILLIAM GATES, III, STEVEN GONZALEZ,
TYLER GOSLIN, WILLIE GREGORY, OWEN
HERMSEN, JAY INSLEE, DAVID KEENAN,
GABRIEL LADD, DANEIL LENTZ,
MAGALIE LERMAN, MARY LYNCH,
SARAH MACDONALD, ANTHONY
MARINELLA, RICARDO MARTINEZ,
BRADLEY MOORE, KATRINA OUTLAND,
JESSICA OWEN, PCC NATURAL MARKETS,
KYLE REKOFKE, STEVEN ROSEN, BLAIR
RUSS, UMAIR SHAH, SPROUTS FARMERS
MARKET, MICHAEL THURSTON, JARED
WALLACE, SANDRA WIDLAN,

Defendants.

No. 2:23-CV-1392-JNW

[PROPOSED] VEXATIOUS LITIGANT
ORDER AGAINST KURT A. BENSHOOF

[PROPOSED] VEXATIOUS LITIGANT ORDER AGAINST KURT A.
BENSHOOF - 1
(2:23-cv-1392-JNW)

Ann Davison
Seattle City Attorney
701 5th Avenue, Suite 2050
Seattle, WA 98104-7095
(206) 684-8200

1 THIS MATTER having come before the undersigned judge of the above-entitled Court
2 pursuant to City's Vexatious Litigant Motion Against Kurt A. Benshoof in the above-entitled cause,
3 and the Court has read and considered the following:

- 4 1. City's Vexatious Litigant Motion Against Kurt A. Benshoof,
- 5 2. Response from Plaintiff, if any.

6 Based on the foregoing, the Court finds that Plaintiff Kurt A. Benshoof has demonstrated a
7 pattern of vexatious litigation evidenced by repeated filings with Courts that are frivolous and brought
8 in bad faith. In accordance with that finding, it is hereby ORDERED that City's Vexatious Litigant
9 Motion Against Kurt A. Benshoof is GRANTED.

10 Prior to the filing of any new case within this Court's jurisdiction Plaintiff Kurt A. Benshoof
11 must:

- 12 1. Comply with any other vexatious litigant orders issued by any state or federal court that
13 has imposed prefiling restrictions on Plaintiff Kurt. A. Benshoof; and
- 14 2. Obtain advance leave from the forum court to file the new action if Plaintiff seeks relief
15 from (i) any other civil or criminal proceeding to which Plaintiff is a party, (ii) COVID
16 public health order(s), (iii) any judicial officer's decision(s), or (iv) any active bench
17 warrant(s) issued by any court.

18 In requesting leave to file from the forum court Plaintiff Kurt A. Benshoof must:

- 19 1. Certify that he has complied with the above requirements;
- 20 2. Identify all past or pending case(s) initiated by Plaintiff against the same defendant(s),
21 concisely state the past disposition or present posture of those cases, and succinctly
22 describe why the proposed new action involves different factual allegations; and
- 23 3. Demonstrate that the new filing is not frivolous or in bad faith.

[PROPOSED] VEXATIOUS LITIGANT ORDER AGAINST KURT A.
BENSHOOF - 2
(2:23-cv-1392-JNW)

Ann Davison
Seattle City Attorney
701 5th Avenue, Suite 2050
Seattle, WA 98104-7095
(206) 684-8200

1 Any new complaint filed by Plaintiff Kurt A. Benshoof that fails to comply with the
2 requirements of this order shall be subject to dismissal. Further, Plaintiff Kurt A. Benshoof may be
3 subject to sanctions for the violation of this order, including, but not limited to, the imposition of costs
4 and fees to any defendant, fines, or any other sanction necessary to enforce compliance with this
5 order.

6
7 DONE and ORDERED:

8
9 DATED this ____ day of _____, 2024.

10
11
12
13 _____
Hon. Jamal Whitehead
United States District Court Judge

14
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[PROPOSED] VEXATIOUS LITIGANT ORDER AGAINST KURT A.
BENSHOOF - 3
(2:23-cv-1392-JNW)

Ann Davison
Seattle City Attorney
701 5th Avenue, Suite 2050
Seattle, WA 98104-7095
(206) 684-8200

Presented by:

ANN DAVISON
Seattle City Attorney

/s/ Dallas LePierre

Dallas LePierre, WSBA# 47391
Catherine E. Riedo, WSBA# 50418

E-mail: Dallas.LePierre@seattle.gov
E-Mail: Catherine.Riedo@seattle.gov

Seattle City Attorney's Office
701 Fifth Avenue, Suite 2050
Seattle, WA 98104
Phone: (206) 684-8200

Attorney for Defendant City of Seattle, Jenny Durkan, Matthew Lentz, Katrina Outland, David Sullivan, Gabriel Ladd, Jordan Wallace, Mary Lynch, Willie Gregory, Faye Chess, Jerome Roache, Adam Eisenberg, Anita Crawford-Willis, Soheila Sarrafan, Ann Davison, and Benjamin Coomer

CERTIFICATE OF SERVICE

I certify that on the 16th day of July, 2024, I caused a true and correct copy of this document to be served on the following in the manner indicated below:

Kurt A. Benshoof 1716 North 128th Street Seattle, WA 98133 & King County Correctional Facility Kurt Alden Benshoof B/A number 2024-008067 500 Fifth Ave. Seattle, WA 98104 <i>[Pro Se Plaintiff]</i>	<input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> CM/ECF <input type="checkbox"/> ABC Legal Messengers <input type="checkbox"/> Faxed <input type="checkbox"/> Via Email: kurtbenshoof@gmail.com
Briana D. Gage 1716 North 128 th Street Seattle, WA 98133 <i>[Pro Se Plaintiff]</i>	<input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> CM/ECF <input type="checkbox"/> ABC Legal Messengers <input type="checkbox"/> Faxed <input type="checkbox"/> Via Email: bgage025@gmail.com
Michael C. Tracy and Sarah N. Turner Gordon Rees Scully 701 Fifth Avenue, Suite 2100 Seattle, WA 98104 (206) 659-5135 <i>[Nathan Cliber]</i>	<input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> CM/ECF <input type="checkbox"/> ABC Legal Messengers <input type="checkbox"/> Faxed <input type="checkbox"/> Via Email: mtracy@grsm.com
Amy Franklin-Bihary 701 Fifth Avenue, Suite 4550 Seattle, WA 98104 (206) 624-4900 <i>[Pro Se Defendant]</i>	<input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> CM/ECF <input type="checkbox"/> ABC Legal Messengers <input type="checkbox"/> Faxed <input type="checkbox"/> Via Email: afb@wechslerbecker.com
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[PROPOSED] VEXATIOUS LITIGANT ORDER AGAINST KURT A.
 BENSHOOF - 5
 (2:23-cv-1392-JNW)

Ann Davison
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 701 5th Avenue, Suite 2050
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1 2 3 4 5 6 7 8	<i>[Puget Consumers Co-op, Freya Brier, Zachary Cook, Central Co-op]</i>	dfeider@sbj.law , mcoughlan@sbj.law
9 10 11 12	James T. Yand & James Johnson Miller Nash LLP 605 Fifth Avenue S, Suite 900 Seattle, WA 98104 (206) 622-8484 <i>[Big 5 Sporting Goods & Sprouts Farmers Market]</i>	<input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> CM/ECF <input type="checkbox"/> ABC Legal Messengers <input type="checkbox"/> Faxed <input type="checkbox"/> Via Email: james.yand@millernash.com , james.johnson@millernash.com cara.lowrance@millernash.com
13 14 15 16 17	Peggy Wu King County Prosecuting Attorney's Office 701 5th Avenue, Suite 600 Seattle, WA 98104 (206) 477-1120 <i>[King County and Judge David Keenan]</i>	<input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> CM/ECF <input type="checkbox"/> ABC Legal Messengers <input type="checkbox"/> Faxed <input type="checkbox"/> Via Email: pwu@kingcounty.gov
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22 23	Blair M. Russ Tomlinson Bomszyk Russ 1000 Second Avenue, Suite 3660 Seattle, WA 98104 (206) 621-1871 <i>[Blair M. Russ]</i>	<input checked="" type="checkbox"/> CM/ECF <input type="checkbox"/> ABC Legal Messengers <input type="checkbox"/> Faxed <input type="checkbox"/> Via Email: bmr@tbr-law.com

/s/ Grace Selsor
Grace Selsor, Legal Assistant

[PROPOSED] VEXATIOUS LITIGANT ORDER AGAINST KURT A.
BENSHOOF - 6
(2:23-cv-1392-JNW)

Ann Davison
Seattle City Attorney
701 5th Avenue, Suite 2050
Seattle, WA 98104-7095
(206) 684-8200

EXHIBIT C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KURT BENSHOOF and BRIANA D.
GAGE,

Plaintiffs,

v.

MOSHE ADMON, DANIEL
AUDERER, JUSTIN BOOKER, FREYA
BRIER, CITY OF SEATTLE, NATHAN
CLIBER, ZACHARY COOK,
BENJAMIN COOMER, ANITA
CRAWFORD-WILLIS, JENNY
DURKAN, AMY FRANKLIN-BIHARY,
WILLIE GREGORY, OWEN
HERMSEN, DAVID KEENAN,
GABRIEL LADD, MAGALIE
LERMAN, MARY LYNCH, KATRINA
OUTLAND, JESSICA OWEN, BLAIR
RUSS, SPROUTS FARMERS
MARKET, KING COUNTY, SEATTLE
PUBLIC SCHOOLS, BIG 5 SPORTING
GOODS, CENTRAL COOP, PUGET
CONSUMERS CO-OP, FAYE CHESS,
ANN DAVIDSON, ADAM
EISENBERG, MATTHEW LENTZ,
JEROME ROACHE, SOHEILA
SARRAFAN, DAVID SULLIVAN, and
JORDAN WALLACE,

Defendants.

CASE NO. 2:23-cv-1392

ORDER DECLARING PLAINTIFF
BENSHOOF A VEXATIOUS
LITIGANT

1. INTRODUCTION

This matter comes before the Court on Defendants' motions to declare Plaintiff Kurt Benshoof a vexatious litigant. Dkt. Nos. 250, 258. Benshoof opposes the motions and moves to stay the proceedings. Dkt. No. 257, 261. Because Benshoof fails to show a need for the requested stay and because Defendants have established that Benshoof uses abusive litigation tactics, the Court DENIES Benshoof's motion to stay and ENTERS a vexatious litigant order against him as set forth below.

2. BACKGROUND¹

Over the last three years, Benshoof has filed ten cases in this district.² Eight of the ten cases have been dismissed. In each case, Benshoof proceeded pro se. Below, the Court briefly recounts each of the cases.

2.1 *Benshoof et al. v. Fauci et al.*, Case No. 2:22-cv-1281-LK.

On September 9, 2022, Benshoof filed a 295-page complaint and petition for an "emergency injunction." Dkt. No. 1. Benshoof sued nearly 70 defendants, including numerous employees of the City of Seattle, King County, Washington State, and the federal government, alleging constitutional violations arising from

¹ Within each subsection below, the record citations correspond to the docket of the case under discussion therein.

² Benshoof also moved twice for leave to file an amicus brief in *United States v. City of Seattle*, Case No. 2:12-cv-1282-JLR, in which the Honorable James L. Robart monitors the City of Seattle Police Department's compliance with its consent decree with the United States Department of Justice. Judge Robart denied Benshoof's motions both times.

1 his state-court family law proceedings. *Id.* Benshoof also objected to various COVID-
2 19 policies involving indoor-masking requirements and vaccines. *Id.*

3 The Honorable Lauren King, United States District Judge, denied Benshoof's
4 request for emergency injunctive relief. Dkt. No. 5. Judge King also found
5 Benshoof's complaint deficient because it failed to comply with Federal Rule of Civil
6 Procedure 8. Judge King granted Benshoof an opportunity to file an amended
7 complaint within 30 days. *Id.* Because Benshoof failed to file an amended complaint
8 by the deadline, Judge King dismissed his case without prejudice on October 31,
9 2022. Dkt. Nos. 7, 8.

10 **2.2 *Benshoof v. Keenan et al.*, Case No. 2:23-cv-751-RAJ.**

11 On May 22, 2023, Benshoof filed a case styled as a habeas petition
12 challenging the state's child-custody determination. Dkt. No. 1. A couple of weeks
13 later, on June 8, 2023, Benshoof moved for a temporary restraining order (TRO).
14 Dkt. No. 15. On June 12, 2023, the Honorable Richard Jones, United States District
15 Judge, denied Benshoof's TRO motion and dismissed the petition with prejudice,
16 holding that the federal court lacked jurisdiction to relitigate Benshoof's interest in
17 his parental rights. Dkt. No. 22.

18 Benshoof appealed. Dkt. No. 24. The Ninth Circuit ordered him to show cause
19 why summary affirmance of the district court's judgment was not appropriate. Dkt.
20 No. 26. Benshoof failed to respond, and the Ninth Circuit summarily affirmed the
21 dismissal order finding "the questions raised in [Benshoof's] appeal so insubstantial
22 as not to require further argument." Dkt. No. 27.
23

1 **2.3 This lawsuit.**

2 On September 7, 2023, Benshoof moved to proceed *in forma pauperis* (IFP)
3 and filed a proposed complaint. Dkt. No. 1. On his IFP application, Benshoof stated
4 he received no money from any source for the last year even though his monthly
5 expenses totaled over \$1,000. *Id.* The Honorable Michelle L. Peterson, United
6 States Magistrate Judge, ordered Benshoof to show cause why his IFP application
7 should be granted considering the contradictions listed in his paperwork. Dkt. No.
8 4. Benshoof responded that he pays for monthly expenses through “personal lifetime
9 savings” and Judge Peterson granted Benshoof’s application to proceed IFP on
10 September 19, 2023. Dkt. No. 8.

11 Benshoof’s complaint in this lawsuit mirrors his claims in his prior case
12 before Judge King, *Benshoof et al. v. Fauci et al.*, Case No. 2:22-cv-1281-LK. It
13 spanned 280 pages, named over 42 defendants (many overlapping with those in the
14 *Fauci* matter), and asserted nearly 40 causes of action covering family law issues,
15 conspiracy theories, and COVID-19 masking policies at local stores. Dkt. No. 9.
16 Benshoof also filed 2,034 pages of stand-alone exhibits. Dkt. No. 13. On September
17 27 and September 29, 2023, Benshoof filed two “emergency” motions for preliminary
18 injunctions. Dkt. Nos. 14, 15. Benshoof then moved for three TROs on successive
19 days between October 2–4, 2023. Dkt. Nos. 16, 20, 23. The Court denied all three
20 motions, finding that Benshoof failed to establish that he was likely to succeed on
21 the merits of any of his motions. Dkt. No. 29.

22 On October 31, 2023, the Court denied Benshoof’s motions for injunctive
23 relief as barred under the *Younger* abstention doctrine. The Court also identified

1 several deficiencies, including that it lacked jurisdiction over Benshoof's claim for
2 declaratory judgment, his Section 1983 claims against private persons and immune
3 parties failed as a matter of law, and his complaint violated Federal Rule of Civil
4 Procedure 8(a). Dkt. No. 38 at 6–13. Accordingly, the Court ordered Benshoof to file
5 an amended complaint. *Id.* at 16.

6 Benshoof's amended complaint failed to cure any of the deficiencies raised by
7 this Court. His amended complaint was similarly sprawling in scope—spanning 184
8 pages, naming over 30 defendants, and asserting nearly 40 causes of action, raising
9 the same family law issues, constitutional allegations, and conspiracy theories. Dkt.
10 No. 245 at 1.

11 On June 28, 2024, after reviewing Defendants' motions to dismiss and
12 conducting an independent review under 28 U.S.C. § 1915(e)(2)(i)–(iii), the Court
13 dismissed Benshoof's first amended complaint with prejudice because he failed to
14 state a claim upon which relief could be granted. *Id.* at 45–46. Specifically, the
15 Court found that Benshoof's "long-winded filings" failed "to allege cognizable legal
16 theories or factual assertions that show[ed] a facially plausible claim for relief." *Id.*
17 at 2. The Court also denied Benshoof's fourth, fifth, and sixth TRO motions. Dkt.
18 Nos. 92, 244.

19 **2.4 *Benshoof et al. v. City of Shoreline et al.*, Case No. 2:24-cv-343-TL.**

20 On March 11, 2024, Benshoof again moved for leave to proceed IFP and filed
21 a proposed complaint involving grocery store masking policies during the COVID-19
22 pandemic. Dkt. No. 1. On April 2, 2024, the Honorable S. Kate Vaughan, United
23

1 States Magistrate Judge, found Benshoof's IFP application deficient because he
2 indicated no income but listed monthly expenses of \$1,630. Dkt. No. 8. Benshoof
3 responded but failed to address this disparity, so Judge Vaughan again ordered him
4 to show cause why his IFP application should be granted. Dkt. No. 11. Benshoof
5 responded claiming to pay for his monthly expenses with credit cards and by
6 "barter[ing] with members of his church[.]" Dkt. No. 12. Ultimately, Judge Vaughan
7 granted Benshoof IFP status, and allowed his case to proceed. Dkt. No. 13.

8 On December 20, 2024, the Honorable Tana Lin, United States District
9 Judge, granted the defendants' motions to dismiss under Federal Rules of Civil
10 Procedure 12(b)(1), 12(b)(2), and 12(c). Judge Lin dismissed Benshoof's complaint
11 with leave to amend. Dkt. No. 85. On January 19, 2025, Benshoof filed an amended
12 complaint, and in response, the defendants again moved to dismiss. Dkt. Nos. 93,
13 94. The motions to dismiss will be ripe for consideration in early March 2025.

14 **2.5 Benshoof v. Keenan, Case No. 2:24-cv-382-JNW.**

15 On March 15, 2024—four days after Benshoof filed his proposed complaint in
16 *Benshoof et al. v. City of Shoreline et al.*, Case No. 2:24-cv-343-TL—Benshoof
17 applied for IFP status to proceed with another proposed complaint. Dkt. No. 1. After
18 two orders to show cause, Benshoof still glossed over the discrepancy between his
19 total lack of income and monthly expenses. Dkt. No. 14. Judge Peterson
20 recommended that this Court deny Benshoof's IFP status, and Benshoof objected,
21 claiming that he pays his monthly expenses with credit cards and through bartering
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1 with members of his church. Dkt. Nos. 14, 15. The Court granted Benshoof IFP on
2 July 30, 2024. Dkt. No. 19.

3 In his complaint, Benshoof alleged that King County Superior Court Judge
4 David Keenan facilitated perjury in the parentage action between him and the
5 mother of his child. Dkt. No. 20. Benshoof made a series of social media posts on
6 Judge Keenan's public Twitter and Facebook pages about the case. Dkt. No. 44 at
7 1–2. In response, Judge Keenan blocked Benshoof from his social media accounts for
8 engaging in ex parte communications with the court. *Id.* On January 9, 2025, this
9 Court dismissed Benshoof's case with prejudice based on judicial immunity. *Id.*

10 **2.6 *Benshoof v. Ferguson et al.*, Case No. 2:24-cv-808-JHC.**

11 On June 7, 2024, preceding pro se but not IFP, Benshoof sued King County
12 Superior Court Judge Marshall Ferguson, as well as several attorneys who have
13 represented parties opposite Benshoof in prior suits—Blair Russ, Jessica Skelton,
14 Michael Tracy, and Sarah Turner. Dkt. No. 1. Benshoof also named the
15 undersigned, Judge Jamal Whitehead, and an unnamed clerk for this Court. *Id.* In
16 his 91-page complaint, Benshoof alleged the defendants committed witness
17 tampering and suborned perjury. *Id.* at 39–65. He also alleged this Court failed to
18 adjudicate his TRO motions in *Benshoof v. Admon*, Case No. 2:23-cv-1392-JNW. *Id.*
19 at 62–65.

20 On August 9, 2024, the Honorable John H. Chun, United States District
21 Judge, granted Defendant Skelton's motion to dismiss, dismissed Benshoof's claims
22 against Skelton without prejudice, and granted Benshoof leave to amend his
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1 complaint with respect to the claims against Skelton. Dkt. No. 40. On November 14,
2 2024, Judge Chun granted Defendant Judge Ferguson's motion to dismiss and
3 dismissed all claims against Judge Ferguson with prejudice based on judicial
4 immunity. Dkt. No. 51. Benshoof moved for leave to amend his complaint, which
5 Judge Chun denied. Dkt. Nos. 57, 61. Judge Chun then dismissed with prejudice all
6 claims against Skelton because Benshoof failed to file a proposed amended
7 complaint as required by Local Civil Rule 15(a). *Id.* On July 10, 2025, Benshoof
8 again moved for leave to file an amended complaint. The motion remains pending.
9 Dkt. No. 63.

10 **2.7 *In re: Kurt Benshoof, Case No. 2:24-mc-43-JNW.***

11 On July 14, 2024, Benjamin Blanchard filed a proposed habeas petition on
12 behalf of Kurt Benshoof. Dkt. No. 1. Because Blanchard did not establish any kind
13 of significant relationship with Benshoof, as required of a proper "next friend" who
14 can pursue a habeas petition on behalf of a detained person, this Court dismissed
15 his petition and closed the case on August 30, 2024. Dkt. No. 10.

16 **2.8 *Benshoof v. Warden, Case No. 2:24-cv-1110-JNW.***

17 Three days after Blanchard's filing, on July 17, 2024, Benshoof petitioned for
18 habeas corpus under 28 U.S.C. § 2241, challenging his pretrial detention at King
19 County Correctional Facility in Seattle, Washington. Dkt. No. 12. Judge Vaughan
20 recommended that this Court dismiss Benshoof's petition based on two procedural
21 deficiencies: (1) "the claims asserted in [Benshoof's habeas] petition lack sufficient
22 clarity and factual support for the Court to conclude that *Younger* abstention is
23

1 . . . inappropriate in the circumstances of this case[;]" and (2) Benshoof "does not
2 show that he presented any of his federal habeas claims to the Washington state
3 trial and appellate courts in his ongoing criminal proceedings, and he offers no
4 explanation as to why exhaustion should not be required[.]" Dkt. No. 22 at 9–10.
5 Accordingly, on January 17, 2025, this Court dismissed Benshoof's petition on
6 procedural grounds as barred by the doctrine of *Younger* abstention and because
7 Benshoof failed to exhaust state court remedies. Dkt. No. 28. Benshoof appealed
8 even though this Court denied a certificate of appealability. Dkt. Nos. 32, 33.

9 **2.9 *City of Seattle v. Benshoof*, Case No. 2:24-mc-57-JNW.**

10 On September 9, 2024, Benshoof tried to remove his criminal cases from state
11 court to this Court. Dkt. No. 1. Because Benshoof failed to pay the filing fee or move
12 for leave to proceed IFP, this Court dismissed his case on January 8, 2025. Dkt.
13 Nos. 4, 5.

14 **2.10 *State of Washington v. Benshoof*, Case No. 2:24-mc-60-JNW.**

15 On September 24, 2024, Benshoof again attempted to remove his Seattle
16 Municipal Court criminal cases to this Court under 28 U.S.C. § 1443. Dkt. No. 1.
17 This Court found that Benshoof met none of the requirements for removal to federal
18 court; thus, Benshoof's proposed removal was defective. Dkt. No. 16. This Court
19 terminated the case for lack of jurisdiction, *id.* at Dkt. No. 16, and Benshoof
20 appealed to the Ninth Circuit, *id.* at Dkt. No. 17.
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3. DISCUSSION³

3.1 Staying the proceedings is unwarranted.

To begin, Benshoof moves to stay this Court's decision on Defendants' motion for a vexatious litigant order until he is released from King County Jail. Dkt. No. 257. A stay is unwarranted.

A district court has discretion to stay proceedings in its own court. *Sullivan v. Aurich*, No. C21-5433-TL-SKV, 2022 WL 2111113, at *1 (W.D. Wash. May 9, 2022) (citing *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)). In exercising this discretion, the court weighs competing interests, including "(1) the damage that might result from granting a stay; (2) the hardship a party may suffer in being required to move forward; and (3) whether a stay would promote the orderly course of justice by the simplification or complication of the issues." *Germack v. Dentists Ins. Co.*, No. C20-0661-JCC, 2020 WL 6505020, at *1 (W.D. Wash. July 7, 2020) (citing *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005)).

That a party is incarcerated does not always support staying a case. See *Fader v. Berrada*, No. C21-5264 TSZ-TLF, 2021 WL 5967949, at *1 (W.D. Wash. Nov. 24, 2021), *report and recommendation adopted in part*, No. C21-5264 TSZ, 2021 WL 5937687 (W.D. Wash. Dec. 16, 2021) ("The interests of justice and equity do not support staying this action" while the plaintiff was incarcerated because "[t]here is no indication that plaintiff's access to the Court is currently restricted or

³ Within each subsection that follows, the record citations correspond to the docket in this case.

1 that plaintiff is unable to litigate this action pro se.”). Benshoof has submitted
2 multiple filings since his arrest, showing that he has access to the Court. Dkt. Nos.
3 261, 263. He also filed a notice registering to electronically file and receive
4 electronic service. Dkt. No. 262. Therefore, Benshoof’s actions contradict his claims,
5 and the Court finds no reason supported in the record to stay its decision.

6 The Court thus DENIES Benshoof’s motion to stay. Dkt. No. 257.

7 **3.2 Legal standard for a bar order.**

8 The All Writs Acts, 28 U.S.C. § 1651(a), provides district courts with the
9 inherent power to enter pre-filing orders against vexatious litigants. *De Long v.*
10 *Hennessey*, 912 F.2d 1144, 1147 (9th Cir. 1990) (“Under the power of 28 U.S.C. §
11 1651(a), enjoining litigants with abusive and lengthy histories is one such form of
12 restriction that the district court may take.”). Although, such orders should be rare,
13 “[f]lagrant abuse of the judicial process cannot be tolerated because it enables one
14 person to preempt the use of judicial time that properly could be used to consider
15 the meritorious claims of other litigants.” *Id.* at 1148.

16 In the Ninth Circuit, a vexatious litigant order may be entered when (1) the
17 litigant has received notice and a chance to be heard before the order is entered, (2)
18 there is an adequate record for review, (3) the litigant’s actions are frivolous or
19 harassing, and (4) the vexatious litigant order is “narrowly tailored to closely fit the
20 specific vice encountered.” *De Long*, 912 F.2d at 1147–48; *Molski v. Evergreen*
21 *Dynasty Corp.*, 500 F.3d 1047, 1057 (9th Cir. 2007). The first two factors are
22 procedural, while the “latter two factors . . . are substantive considerations . . .
23

1 [that] help the district court define who is, in fact, a ‘vexatious litigant’ and
2 construct a remedy that will stop the litigant’s abusive behavior while not unduly
3 infringing the litigant’s right to access the courts.” *Molski*, 500 F.3d at 1058.

4 **3.3 Benshoof is a vexatious litigant.**

5 **3.3.1 Notice and opportunity to be heard.**

6 The first factor the Court must consider is whether the litigant accused of
7 vexatious behavior has been given fair notice of the possibility that they might be
8 declared a vexatious litigant. *De Long*, 912 F.2d at 1147. And an opportunity to
9 oppose the order before it is entered. *Molski*, 500 F.3d at 1058. The court need not
10 hold an in-person hearing for this factor to be met. *See Gavin v. City & Cty. of S.F.*,
11 No. 15-CV-05202-EMC, 2016 WL 126937, at *2 (N.D. Cal. Jan. 12, 2016); *see also*
12 *Reddy v. MedQuist, Inc.*, No. 12-cv-1324-PSG, 2012 WL 6020010, at *3 (N.D. Cal.
13 Dec. 3, 2012) (“The requirement that the plaintiff receive an opportunity to be heard
14 does not include an oral hearing; the opportunity to brief the issue fully satisfies
15 due process requirements.”).

16 This factor is met, as Benshoof had an opportunity to—and did in fact—
17 oppose Defendants’ motion for a vexatious litigant order.

18 **3.3.2 Adequate record for review.**

19 The second factor considers whether the district court has created an
20 adequate record for review, including a listing of all the cases and motions that lead
21 the district court to conclude that a vexatious litigant order is needed. *De Long*, 912
22 F.2d at 1147 (citing *Martin-Trigona v. Lavien*, 737 F.2d 1254, 1260 (2d Cir. 1984)).
23

1 At a minimum, the record should show that the litigant's activities are numerous or
2 abusive. *Id.*

3 The Court has listed and discussed all the actions (ten, total) that Benshoof
4 has filed in this district in the past three years alone. A review of them reveals that
5 eight out of the ten cases have been dismissed either for lack of jurisdiction or
6 failure to state a claim.

7 **3.3.3 Frivolous or harassing filings.**

8 The third factor "gets to the heart of the vexatious litigant analysis," *see*
9 *Molski*, 500 F.3d at 1059, and requires the district court to look to "both the number
10 and content of the filings as indicia" of the frivolousness of the litigant's claims, *De*
11 *Long*, 912 F.2d at 1148. "An injunction cannot issue merely upon a showing of
12 litigiousness. The plaintiff's claims must not only be numerous, but also be patently
13 without merit." *Molski*, 500 F.3d at 1059.

14 Benshoof stands out as a particularly difficult litigant, not only because of his
15 prolific filings but also because of his abusive litigation tactics. For example, in this
16 case, Benshoof sought six meritless motions for temporary restraining orders, as
17 well as duplicative "emergency" motions for preliminary injunctions. *See* Dkt. Nos.
18 14, 15, 16, 20, 23, 129, 158. Because they were filed as TROs, the Court, at least
19 initially, handled them on an expedited basis, as required by the civil rules until it
20 become clear that these were meritless filings. Handling motions for expedited
21 relief, even those lacking in substance, is a considerable drain on the Court's
22 resources.
23

1 Benshoof also has a history of repeatedly suing the same people or entities—
2 essentially, using multiple cases to harass them. In this Court alone, Benshoof has
3 sued his former romantic partner, Jessica Owen, four times and Owen's current
4 partner, Magalie Lerman, three times. He also routinely sues the judges presiding
5 over his cases, if displeased by the outcome of a case or ruling. Perhaps the best
6 example is Benshoof's suits against King County Superior Court Judge David
7 Keenan. After Judge Keenan presided over a parentage action between Benshoof
8 and Owen, Benshoof has sued Judge Keenan *four* times in this district. Similarly,
9 he often sues any lawyer on the opposing side of his cases; most notably, Benshoof
10 sued Owen's counsel, Blair Russ and Nathan Cliber. Finally, Benshoof uses service
11 of process to harass his named defendants by refusing to accept waivers of service
12 and, instead, utilizing their home addresses. From this, the Court finds that
13 Benshoof is not acting in good faith.

14 This is not the first court to find Benshoof vexatious. On March 31, 2023,
15 King County Superior Court Judge Marshall Ferguson determined that Benshoof is
16 a vexations litigant based on his "pattern of abusive litigation and weaponization of
17 the [King County Superior Court] system[.]" Dkt. No. 13-2 at 111–117; *see also*
18 *Benshoof v. Cliber et al.*, Case No. 22-2-15958-8 (King Cnty. Sup. Ct. Feb. 17, 2023),
19 Dkt. No. 177. Judge Ferguson imposed certain filing restrictions on Benshoof,
20 including requiring him to move for leave to proceed with any future action filed
21 against Cliber, Owen, Lerman, and Owen's friend Owen Hermsen, and to submit a
22 copy of the abusive litigant order with any complaint. *Id.* On March 1, 2024, Judge
23

1 Ferguson entered a Contempt Order for violating the filing restrictions, in part
2 based on his filings in federal court. Dkt. No. 129-3.

3 Finally, other sanctions, such as monetary fines, would be too punitive and
4 not dissuade Benshoof from continued filings given that his IFP requests have
5 shown that he has limited financial resources.

6 So the Court concludes that Benshoof is a vexatious litigant and that a bar
7 order is the most reasonable course here.

8 **3.3.4 Narrowly tailored.**

9 The fourth and final factor considers whether the pre-filing order to be
10 entered is narrowly tailored to the vexatious litigant's wrongful behavior. *Molski*,
11 500 F.3d at 1061. "Narrowly tailored orders are needed 'to prevent infringement of
12 the litigator's right of access to the courts.'" *De Long*, 912 F.2d at 1148 (citing *Sires*
13 *v. Gabriel*, 748 F.2d 49, 51 (1st Cir. 1984)). The pre-filing restriction must fit the
14 plaintiff's specific practices. *See, e.g., Wood v. Santa Barbara Chamber of Com., Inc.*,
15 705 F.2d 1515, 1525 (9th Cir. 1983) (the injunction must describe in reasonable
16 detail the act or acts sought to be restrained).

17 The specific vice the Court seeks to address are Benshoof's serial, and
18 sometimes contemporaneous, filings of lawsuits addressing the same topics and
19 against the same defendants. Benshoof has brought multiple lawsuits that have
20 been dismissed for lack of jurisdiction or failure to state a claim. He has used these
21 lawsuits to harass the defendants through repeated actions and abusive tactics like
22 frivolous motions for temporary restraining orders.
23

1 To remedy or prevent similar conduct in the future by Benshoof, Defendants
2 request that the Court require him to comply with Judge Ferguson's vexatious
3 litigant order: Benshoof must obtain advance leave from the forum court if he seeks
4 relief from (1) any other civil or criminal proceeding to which he is a party; (2)
5 COVID public health orders; (3) any judicial officer's decision; or (4) any active
6 bench warrants issued by any court. Dkt. No. 250 at 14; *see also* Dkt. No. 13-2 at
7 111–117 (Order Restricting Abusive Litigation of Kurt Benshoof, signed by Judge
8 Ferguson on March 31, 2023). Defendants also ask that the Court make Benshoof
9 certify that he has complied with these requirements, identify all past or pending
10 cases initiated against the same defendants, concisely state the past disposition or
11 present posture of those cases, and succinctly describe why the proposed new action
12 involves different factual allegations; and demonstrate that the new filing is not
13 frivolous or in bad faith. Dkt. No. 250 at 14. Finally, Defendants ask that the Court
14 order Benshoof to accept waivers of service or utilize professional process servers in
15 any action found meritorious. Dkt. No. 258 at 1–2.

16 The Court finds these terms generally agreeable but unlikely to cure one of
17 Benshoof's most disruptive tactics—the length of his filings. Further, Judge
18 Ferguson's order cannot constrain Benshoof in a federal forum and there is no need
19 for this Court to address or reimpose the terms of Judge Ferguson's when it comes
20 to Benshoof's state court filings. Lastly, the Court will not impose restrictions on
21 how Benshoof accomplishes service of process beyond the applicable civil and local
22 rules. Because the Court imposes prefiling restrictions, this will prevent Benshoof
23 for using service of process as a harassing technique.

1 Accordingly, the Court refines the proposed terms and imposes the following
2 pre-filing order:

- 3 • Benshoof is prohibited from filing any pro se civil action in the Western
4 District of Washington without leave from the Court. To obtain leave from
5 the Court, Benshoof must submit a declaration signed under the penalty of
6 perjury that identifies all past or pending cases initiated against the same
7 defendant(s), concisely states the past disposition or present posture of those
8 cases, succinctly describe why the proposed new action involves different
9 factual allegations, and demonstrate that the new filing is not frivolous or in
10 bad faith. This declaration may not exceed ten pages of typed material.
 - 11 • The Court will deny leave to proceed with a civil action upon finding that it
12 suffers from the defects outlined above, or that it is otherwise without merit,
13 without issuing an order to show cause.
 - 14 • The Clerk will initially file all Benshoof's future pro se complaints and
15 motions for in forma pauperis status in a miscellaneous case number
16 specifically designated for this purpose pending the Court's review of each
17 such complaint and motion.
 - 18 • The Clerk will not issue summons in any pro se action of Benshoof's without
19 approval of the Court.
 - 20 • This pre-filing screening will not apply to any filing made in this district
21 where Benshoof is represented by counsel. Any such complaint accompanied
22 by a filing fee may receive a civil case number.
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4. CONCLUSION

In sum, Defendants' motion to declare Plaintiff Kurt Benshoof a vexatious litigant is GRANTED in part and Plaintiff's motion to stay is DENIED.

Dated this 11th day of February, 2025.


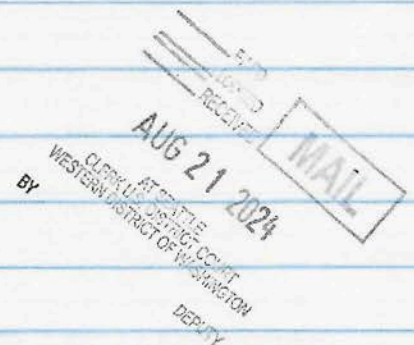

Jamal N. Whitehead
United States District Judge

EXHIBIT D

Hon. J.N. Whitehead

U.S. District Court
for the Western District of WashingtonSEATTLE SCHOOL DISTRICT
NO. 1, Plaintiff,
v.KURT BENSHOOF, Defendant
andKURT BENSHOOF, Counterclaim
Plaintiffand A.R.W. By And Through
His Father KURT BENSHOOF,
Counterclaim Plaintiff,
v.SEATTLE SCHOOL DISTRICT NO. 1,
NATHAN CLIBER, BLAIR RUSS,
KING COUNTY, JESSICA OWEN,
SARAH MACK, GREGORY NARVER,
Counterclaim Defendants.

No. 2:23-CV-1829-JNW

COUNTERCLAIM
PLAINTIFFS' NOTICE
OF APPEAL

KURT BENSHOOF, on behalf of himself
and as next friend under FRCP 17 to
his fifteen year old son, A.R.W., give
notice of their appeal to the U.S.
Court of Appeals for the Ninth Circuit.

PAGE 1 OF 5

Counterclaim Plaintiff Kurt Benshoof ("Benshoof") has been held incommunicado by King County officials since July 3, 2024, unable to obtain a piece of paper, an envelope, postage, or to access a printer or computer. Today, August 16, 2024, is the first day Benshoof has been able to write and mail a document to any court, including U.S. District Court.

Benshoof is indigent and cannot pay the Ninth Circuit appellate filing fee in this case.

Benshoof's computers, phones and his computer files, records and evidence were unlawfully seized in a SWAT raid of Benshoof's home church on July 3, 2024. The raid involved approximately fifteen (15) SWAT in full riot gear, a helicopter over Benshoof's home church, a robot sent into Benshoof's home church, flash bang grenades, and the windows of Benshoof's home church were shot out as SWAT fired chemical weapons grenades into Benshoof's home church over several hours.

The habeas corpus petitions filed by Benshoof's congregation members and friends were assigned to Judge

Jamal Whitehead across two separate cases, beginning on or around July 16, 2024, in case nos. 2:24-mc-0043-JNW and 2:24-cv-01110-JNW-SKV. To date, Judge Whitehead has refused to issue a writ of habeas corpus, despite the federal law requirement that a writ be issued within THREE (3) DAYS.

"If letters and ~~documents~~ private documents can thus be seized and held and used against a citizen accused of an offense, the protection of the Fourth Amendment declaring his right to be secure against such searches and seizures is of no value, and, so far as those thus placed are concerned, might as well be stricken from the Constitution." *Mapp v. Ohio*, 367 U.S. 643, at 648 (1961) quoting *Weeks v. United States*, 232 U.S. 383 at 393 (1914).

Yet again, an ordinary person exercising objective reasonableness, would conclude that Judge Whitehead is conspiring with King County officials, City of Seattle officials, and private attorneys and perjuring prostitutes, to deny Benschoof's rights.

"Detention incommunicado for days on
PAGE 3 OF 5

end is so fraught with evil that we should hold it to be inconsistent with the requirements of that free society which is reflected in the Bill of Rights. It is the means whereby the commands of the Fifth Amendment... are circumvented." *Reck v. Pate*, 367 U.S. 433, at 448 (1961). "Detention incommunicado was the secret of the Inquisition and is the secret of successful interrogation in communist countries." *Reck v. Pate*, at 446, ~~447~~

Because Benshoof has no computer or printer access, Benshoof cannot download any court forms or print them. For now, the interests of justice require the Court to accept this Notice of Appeal as sufficient to preserve the right of Counterclaim Plaintiffs to appeal and orders of dismissal and denial issued by Judge Whitehead in the instant case, until such time as Benshoof's rights are not being violated and Benshoof is afforded adequate access to computers, printers, and other materials needed to file and compose documents in federal court.

Benshoof states the foregoing under

EXHIBIT E

HONORABLE JAMAL N. WHITEHEAD

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SEATTLE SCHOOL DISTRICT NO. 1,

Plaintiff/Counterclaim Defendant,

v.

KURT BENSHOOF,

Defendant/Counterclaim Plaintiff,

A.R.W. by and through his father,
KURT BENSHOOF,

Counterclaim Plaintiff,

v.

NATHAN L. CLIBER, SARAH E.
SPIERLING MACK, GREGORY C.
NARVER, JESSICA R. OWEN, BLAIR M.
RUSS,

Counterclaim Defendants.

No. 2:23-cv-01829-JNW

DISMISSED COUNTERCLAIM
DEFENDANTS SARAH E. SPIERLING
MACK AND GREGORY C.
NARVER'S COMBINED RESPONSE
TO DEFENDANT KURT
BENSHOOF'S MOTION TO VACATE
AND MOTION FOR IN CAMERA
REVIEW

NOTE ON MOTION CALENDAR:
February 6, 2025

I. INTRODUCTION

On July 19, 2024, this Court dismissed Plaintiff Seattle School District's Complaint for Declaratory Relief for lack of subject matter jurisdiction, Dkt. # 67, and dismissed all of Defendant Kurt Benshoof's ("Benshoof's") counterclaims, Dkt. # 66, disposing of this case in its MACK AND NARVER'S COMBINED RESPONSE TO DEFENDANT'S MOTIONS TO VACATE AND FOR IN CAMERA REVIEW- 1
No. 2:23-cv-01829-JNW

1 entirety. Benshoof subsequently filed a Notice of Appeal. Dkt. # 68. Now, six months after the
2 Court dismissed all claims and counterclaims, and five months after Benshoof filed his Notice of
3 Appeal, Benshoof has filed two motions before this Court: 1) a Motion to Vacate the Court's
4 order dismissing Benshoof's counterclaims, Dkt. # 75; and 2) a Motion for in Camera Review of
5 dismissed counterclaim defendants' e-mails with their legal counsel, Dkt. # 76. Due to the
6 procedural posture of this case, both motions fail, and they lack merit in any event. For these
7 reasons, the Court should deny Benshoof's Motion to Vacate and Motion for in Camera Review.
8

9 II. PROCEDURAL HISTORY

10 On November 28, 2023, Plaintiff Seattle School District No. 1 (the "District") filed a
11 Complaint for Declaratory Relief regarding its obligations to respond to Benshoof's request for
12 certain school records. *See* Dkt. # 67 at 3. In response, Benshoof filed a 42 U.S.C. § 1983
13 ("Section 1983") counterclaim against parties including general counsel to the District, Gregory
14 Narver ("Narver"), and outside legal counsel to the District, Sarah Mack ("Mack"). *See* Dkt. # 66
15 at 2. Narver and Mack moved to dismiss Benshoof's counterclaims. *Id.* The Court granted their
16 motions, and in an order dated July 19, 2024, dismissed all of Benshoof's counterclaims. *Id.*
17 Specifically, the Court dismissed the Section 1983 claims against private parties, including
18 Mack, "[b]ecause Benshoof's allegations against private parties lack state action," *id.* at 9, and
19 against Narver because he "is entitled to qualified immunity," *id.* at 12. The Court also dismissed
20 the District's Complaint for lack of subject matter jurisdiction. Dkt. # 67. The Court
21 subsequently directed the Clerk to close the case. Dkt. # 68. Benshoof filed a Notice of Appeal to
22 the Ninth Circuit Court of Appeals on August 21, 2024. Dkt. # 72. Despite the fact that his
23 appeal remains pending, on January 15, 2025, Benshoof filed the present Motion to Vacate and
24 Motion for in Camera Review before this Court.
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27 MACK AND NARVER'S COMBINED RESPONSE
TO DEFENDANT'S MOTIONS TO VACATE AND
FOR IN CAMERA REVIEW- 2
No. 2:23-cv-01829-JNW

III. ARGUMENT

A. The District Court Lacks Jurisdiction to Hear Benshoof's Motion to Vacate, But Even If Benshoof Could Bring His Motion, It Lacks Merit.

1. Benshoof's pending appeal precludes his Motion to Vacate.

By filing his Notice of Appeal, Benshoof divested this Court of jurisdiction to hear his Motion to Vacate under Federal Rule of Civil Procedure ("Rule") 60(b). In the United States Court of Appeals for the Ninth Circuit ("Ninth Circuit"), "the filing of a notice of appeal divests the district court of jurisdiction to dispose of [a Rule 60(b)] motion after an appeal has been taken, without a remand from [the appellate court]." *Scott v. Younger*, 739 F.2d 1464, 1466 (9th Cir. 1984); *Gould v. Mut. Life Ins. Co. of New York*, 790 F.2d 769, 772 (9th Cir. 1986) ("Unless the appellate court remands to the district court, the latter is without jurisdiction to consider motions to vacate judgment."). Thus, while a case is on appeal, "the district court [does] not have jurisdiction to decide [a Rule 60(b)] motion." *Scott*, 790 F.2d at 772. "To seek Rule 60(b) relief, [while a case is on appeal,] the proper procedure is to ask the district court whether it wishes to entertain the motion, or to grant it, and then move [the appellate] court, if appropriate, for remand of the case." *Id.* (original punctuation omitted). Benshoof failed to comply with these procedural requirements. Because he failed to first ask this Court to entertain his motion, and failed to seek and obtain remand from the Ninth Circuit, his Motion to Vacate is procedurally defective and must be denied.

2. Even if this Court could consider Benshoof's motion, it lacks merit.

Even if Benshoof could overcome the procedural errors with his Motion to Vacate, he cannot prevail on the merits. Benshoof appears to move to vacate this Court's dismissal of his

1 counterclaims under both Rule 60(b)(2) and (3), *see* Dkt. # 75 at 1, but he cannot satisfy the
2 requirements of either provision. The Court should thus refuse to entertain his motion.

3 First, Rule 60(b)(2), concerning new evidence, is inapplicable because Benshoof asks the
4 court to vacate a pre-trial order of dismissal for failure to state a claim. Rule 60(b)(2) permits a
5 trial court to relieve a party from a final judgment or order due to “newly discovered evidence
6 that, with reasonable diligence, could not have been discovered in time to move for a new trial
7 under Rule 59(b).” Rule 60(b)(2). To prevail, “the movant must show the evidence (1) existed at
8 the time of the trial, (2) could not have been discovered through due diligence, and (3) was of
9 such magnitude that production of it earlier would have been likely to change the disposition of
10 the case.” *Jones v. Aero/Chem Corp.*, 921 F.2d 875, 878 (9th Cir. 1990). “The plain terms of the
11 Rule establish two predicate circumstances to move for such relief—there must have been a trial,
12 and the evidence must have been unavailable within the period to move for a new trial under
13 Rule 59(b).” *Creech v. Kind Lending LLC*, No. CV-22-00871-PHX-SMB, 2024 WL 4591811, at
14 *8 (D. Ariz. Oct. 28, 2024). “[B]ecause Rule 60(b)(2) provides relief only after a trial has
15 occurred,” requests for “relief from [] pre-trial orders on motions to dismiss” are “outside the
16 ambit of what the Rule allows the Court to consider.” *Id.* This construction of the rule is
17 particularly apt here, where Benshoof fails to demonstrate how any purported “newly discovered
18 evidence” would change the Court’s order that Benshoof’s counterclaims fail as a matter of law.
19 *See* Dkt. # 66 at 7, 9; *see also Myles v. Sullivan*, No. CV-04-05329-JAT, 2010 WL 4628688, at
20 *3 (E.D. Cal. Nov. 8, 2010) (“The Court finds no reason to reconsider its prior order dismissing
21 this case without prejudice . . . [where] Plaintiff has provided no facts to change the Court’s prior
22 holding.”); *Aero/Chem Corp.*, 921 F.2d at 878. Here, no trial occurred. Accordingly, the relief he
23 seeks is beyond the scope of Rule 60(b)(2) and his request for relief fails.
24

25 MACK AND NARVER’S COMBINED RESPONSE
26 TO DEFENDANT’S MOTIONS TO VACATE AND
27 FOR IN CAMERA REVIEW- 4
No. 2:23-cv-01829-JNW

1 Likewise, Rule 60(b)(3) is equally unavailing as the basis for Benshoof's motion. "To
2 prevail [on a Rule 60(b)(3) motion to vacate], the moving party must prove by clear and
3 convincing evidence that the verdict was obtained through fraud, misrepresentation, or other
4 misconduct and the conduct complained of prevented the losing party from fully and fairly
5 presenting the defense." *De Saracho v. Custom Food Machinery, Inc.*, 206 F.3d 874, 880 (9th
6 Cir. 2000). Further, "the moving party must have a valid defense to the dismissal motion they
7 wish the Court to vacate; otherwise it would be a 'fruitless gesture' to set aside the judgment[.]"
8 *Puente v. Cnty. of Los Angeles*, No. CV075809PSGFMox, 2008 WL 11452489, at *3 (C.D. Cal.
9 July 3, 2008) (citing *Alexander v. Robertson*, 882 F.2d 421, 425 (9th Cir. 1989)).

11 It is difficult to decipher the exact "fraud" that Benshoof alleges. But even assuming that
12 all of the allegations in his motion are true, none are relevant to the Court's order dismissing all
13 counterclaims for "fail[ure] to state a claim that provides independent federal jurisdiction[.]" *See*
14 Dkt. # 66 at 2; *see e.g., Naharaja v. Wray*, No. 3:13-CV-01261-HZ, 2015 WL 5970346, at *2 (D.
15 Or. Oct. 12, 2015) ("[E]ven assuming Plaintiff's accusations, as outlandish as they are, were true,
16 Plaintiff fails to establish grounds for relief under Rule 60(b)(3). None of Plaintiff's accusations
17 are relevant to this Court's decision to dismiss Plaintiff's complaint because he failed to state a
18 claim."). Benshoof does not, and cannot, prove that 1) the dismissed counterclaim defendants
19 "obtained" the dismissal order "through fraud," and that 2) "the conduct complained of
20 prevented [Benshoof] from fully and fairly presenting [a] defense" to dismissal. *See De Saracho*,
21 206 F.3d at 880. The Court dismissed the counterclaims in this matter on the basis that those
22 Section 1983 claims lacked any support for the requisite state action element, Dkt. # 66 at 7-9,
23 and because defendant Narver is immune, *id.* at 9-12. A connection between Benshoof's fraud
24 allegations—to the extent he even makes them—and the dismissal of his counterclaims for
25

27 MACK AND NARVER'S COMBINED RESPONSE
TO DEFENDANT'S MOTIONS TO VACATE AND
FOR IN CAMERA REVIEW- 5
No. 2:23-cv-01829-JNW

1 failure to state a claim as a matter of law, does not exist. Thus, Benshoof also fails to prove he is
2 entitled to relief under Rule 60(b)(3).

3 In sum, the Court should deny Benshoof's Motion to Vacate as procedurally improper
4 and because it fails on the merits.

5
6 **B. Benshoof's Motion for In Camera Review Is Also Improper.**

7 Benshoof's Motion for in Camera Review is improper because the Court cannot grant the
8 relief he seeks. Specifically, Benshoof seeks an order—in a now-closed case—compelling
9 dismissed parties to produce their attorney-client privileged records. Benshoof seeks these
10 records “under the crime-fraud exception to a claim of privileged communications.” Dkt. # 76 at
11 2. Like his Motion to Vacate, his Motion for in Camera Review also fails on procedural and
12 substantive grounds.

13
14 **1. Benshoof may not compel production of documents to support his claims after
15 those claims have been dismissed.**

16 The crime-fraud exception does not provide litigants an independent right to review
17 documents. It is a basis for compelling discovery or trial evidence. *See Cunningham v.*
18 *Connecticut Mut. Life Ins.*, 845 F. Supp. 1403, 1416 (S.D. Cal. 1994). Specifically, “the crime-
19 fraud exception insures that the confidentiality enveloping the attorney-client relationship does
20 not encompass communications ‘made for the purpose of getting advice for the commission of a
21 fraud or crime.’” *In re Grand Jury Proc.*, 87 F.3d 377, 381 (9th Cir. 1996) (quoting *United*
22 *States v. Zolin*, 491 U.S. 554, 563, 109 S. Ct. 2619, 2627, 105 L.Ed.2d 469 (1989)); *see also*
23 *Medicraft v. Washington*, No. 2:21-CV-01263-BJR, 2023 WL 3467360, at *3 (W.D. Wash. Apr.
24 21, 2023) (noting “crime-fraud exception applies when party seeking discovery has made prima
25
26
27

1 facie case that attorney advice was sought to further commission of a crime or fraud”). It is an
2 exception to the rule that privileged communications are not discoverable in litigation.

3 As a means for compelling evidence, the crime-fraud exception has no applicability 1)
4 after a final judgment where there is no further trial or discovery, *see e.g., Gill v. Mayorkas*, No.
5 C20-939 MJP, 2022 WL 92986, at *2 (W.D. Wash. Jan. 10, 2022) (motion to compel is moot
6 after motion to dismiss is granted); or 2) against individuals who are no longer parties to a
7 lawsuit and thus could not be compelled to produce records, *see In re Chevron Corp.*, 633 F.3d
8 153, 168 (3d Cir. 2011) (order compelling dismissed party to produce documents would be
9 unenforceable). Given that the Court already has dismissed this case, including the
10 counterclaims, Benshoof has no basis to compel production of any materials, let alone privileged
11 materials from the dismissed parties.
12

13
14 **2. Benshoof also fails to demonstrate that the crime-fraud exception applies here.**

15 Even if the Court could consider Benshoof’s Motion for in Camera Review (which it
16 cannot), Benshoof also fails to make the requisite showing of a criminal or fraudulent scheme as
17 necessary for the crime-fraud exception to apply. To compel production of privileged records
18 under the crime-fraud exception, a party must first “show that the client was engaged in or
19 planning a criminal or fraudulent scheme when it sought the advice of counsel to further the
20 scheme.” *In re Napster, Inc. Copyright Litig.*, 479 F.3d 1078, 1090 (9th Cir. 2007) (cleaned up).
21 Benshoof appears to allege “criminal assistance to [] kidnapping” as the requisite criminal
22 scheme. Yet he does not, and cannot, cite to any kidnapping conviction or even a charge
23 involving the dismissed counterclaim defendants. None exists. His opinion of what constitutes
24 kidnapping is insufficient. *See id.* at 1091-96. Because Benshoof fails to demonstrate a criminal
25
26

1 scheme to invoke the crime-fraud exception, his Motion for in Camera Review also fails on its
2 merits. The Court should deny the motion.

3 IV. CONCLUSION

4 For the reasons stated above, dismissed counterclaim defendants Mack and Narver
5 respectfully request that the Court deny Benshoof's Motion to Vacate and Motion for in Camera
6 Review.
7

8
9 I certify that this memorandum contains 2,035 words, in compliance with the Local Civil
10 Rules.

11 DATED this 24th day of January, 2025.
12

13
14 PACIFICA LAW GROUP LLP

15 s/ Jessica A. Skelton

16 Jessica A. Skelton, WSBA #36748

17 Attorneys for Counterclaim Defendants

18 Sarah E. Spierling Mack and Gregory C. Narver
19
20
21
22
23
24
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26

27 MACK AND NARVER'S COMBINED RESPONSE
TO DEFENDANT'S MOTIONS TO VACATE AND
FOR IN CAMERA REVIEW- 8
No. 2:23-cv-01829-JNW

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HONORABLE JAMAL N. WHITEHEAD

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SEATTLE SCHOOL DISTRICT NO. 1,

Plaintiff/Counterclaim Defendant,

v.

KURT BENSHOOF,

Defendant/Counterclaim Plaintiff,

A.R.W. by and through his father,
KURT BENSHOOF,

Counterclaim Plaintiff,

v.

NATHAN L. CLIBER, SARAH E.
SPIERLING MACK, GREGORY C.
NARVER, JESSICA R. OWEN, BLAIR M.
RUSS,

Counterclaim Defendants.

No. 2:23-cv-01829-JNW

ORDER DENYING
DEFENDANT/COUNTERCLAIM
PLAINTIFF KURT BENSHOOF'S
MOTION TO VACATE AND MOTION
FOR IN CAMERA REVIEW

[PROPOSED]

This matter came before the Court on Defendant/Counterclaim Plaintiff Kurt Benshoof's Motion to Vacate, Dkt. # 75, and Motion for in Camera Review, Dkt. # 76 (collectively, "Motions"). The Court has reviewed the Motions, the response of Dismissed Counterclaim

[PROPOSED] ORDER DENYING
KURT BENSHOOF'S MOTION TO VACATE AND
MOTION FOR IN CAMERA REVIEW- 1
No. 2:23-cv-01829-JNW

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1 Defendants Sarah E. Spierling Mack and Gregory C. Narver, Defendant/Counterclaim Plaintiff
2 Kurt Benshoof's Reply, if any, and the records and pleadings already on file in this matter.

3 Based on the foregoing, the Court orders that Defendant/Counterclaim Plaintiff Kurt
4 Benshoof's Motion to Vacate and Motion for in Camera Review are DENIED.
5

6 DATED this _____ day of _____, 2025.
7

8 _____
9 Honorable Jamal N. Whitehead
United States District Judge

10
11 Presented by:

12 PACIFICA LAW GROUP LLP
13

14 s/ Jessica A. Skelton

Jessica A. Skelton, WSBA #36748

15 Attorneys for Counterclaim Defendants

16 Sarah E. Spierling Mack and Gregory C. Narver
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27 [PROPOSED] ORDER DENYING
KURT BENSHOOF'S MOTION TO VACATE AND
MOTION FOR IN CAMERA REVIEW- 2
No. 2:23-cv-01829-JNW

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penalty of perjury this 16th day of August 2024 in Kent Washington. Benshoof has been denied an ~~pen~~ ink pen since his unlawful arrest on July 3, 2024 and must sign in pencil.

Kurt Benshoof
Kurt Benshoof

Name Baronof, Kurt
BA# 2024-007002
King County Correctional Facility
500 5th Avenue
Seattle, WA 98104-2332

FILED
AUG 21 2024
CLERK'S OFFICE
WESTERN DISTRICT OF WASHINGTON

AUG 21 2024

AT SEATTLE
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WESTERN DISTRICT OF WASHINGTON
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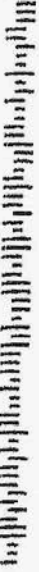


EXHIBIT F

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SEATTLE SCHOOL DISTRICT NO. 1,

Plaintiff / Counterclaim
Defendant,

v.

KURT BENSHOOF,

Defendant / Counterclaim
Plaintiff,

A.R.W. By and Through His Father, KURT
BENSHOOF,

Counterclaim Plaintiff,

v.

NATHAN L. CLIBER,
SARAH E. SPIERLING MACK,
GREGORY C. NARVER,
JESSICA R. OWEN,
BLAIR M. RUSS,

Counterclaim Defendants.

NO. 2:23-cv-01829-JNW

COUNTERCLAIM DEFENDANT
NATHAN CLIBER'S JOINDER OF
COUNTERCLAIM DEFENDANTS MACK
AND NARVER'S RESPONSE TO
COUNTERCLAIM PLAINTIFFS'
MOTIONS TO VACATE AND FOR *IN*
CAMERA REVIEW

NOTE ON MOTION CALENDAR:

February 6, 2025

COUNTERCLAIM DEFENDANT CLIBER'S
JOINDER OF COUNTERCLAIM
DEFENDANTS MACK AND NARVER'S
RESPONSE TO COUNTERCLAIM PLAINTIFF
KURT BENSHOOF'S MOTIONS - 1
2:23-cv-01829-JNW

**GORDON REES SCULLY
MANSUKHANI, LLP**
701 5th Avenue, Suite 2100
Seattle, WA 98104
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Facsimile: (206) 689-2822

Comes now Counterclaim Defendant Nathan Cliber ("Counterclaim Defendant Cliber") and files this Joinder of Counterclaim Defendants Mack and Narver's Combined Response to Defendant Plaintiff Kurt Benshoof's Motion to Vacate and Motion for *In Camera* Review (the "Response"), Dkt. 77, and states in support thereof as follows:

Counterclaim Defendant Cliber joins in Counterclaim Defendants Mack and Narver's Response and incorporates the same as if fully stated herein. For the reasons stated in Defendants Mack and Narver's Response, both the general arguments that apply to all of the counterclaim defendants in this action and the arguments specific to Counterclaim Defendant Mack, Counterclaim Defendant Cliber respectfully requests that this Court deny Defendant/Counterclaim Plaintiff Benshoof's Motions to Vacate (Dkt. 75) and for *In Camera* Review (Dkt. 76).

The undersigned certifies that this memorandum contains 123 words, in compliance with the Local Civil Rules.

Dated: January 30, 2025

GORDON REES SCULLY MANSUKHANI,
LLP

By: /s/ Sarah N. Turner
Sarah N. Turner, WSBA No. 37748

By: /s/ Michael C. Tracy
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Attorneys for Defendant Nathan Cliber

COUNTERCLAIM DEFENDANT CLIBER'S
JOINDER OF COUNTERCLAIM
DEFENDANTS MACK AND NARVER'S
RESPONSE TO COUNTERCLAIM PLAINTIFF
KURT BENSHOOF'S MOTIONS - 2
2:23-cv-01829-JNW

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CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that on this day a true and accurate copy of the foregoing document was filed with the above-entitled Court through the United States District Court CM / ECF System and served as indicated:

Plaintiff / Counterclaim Defendant
Seattle School District No. 1\

☒ U.S. Mail Postage Prepaid
☐ Hand Delivery
☒ Email: sarah.mack@pacificlawgroup.com

Sarah Spierling Mack
Pacifica Law Group LLP
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Email: sarah.mack@pacificlawgroup.com

Defendant / Counterclaim Plaintiff

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Kurt Benshoof
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Seattle, WA 98133

Email: kurtbenshoof@gmail.com

Date: January 30, 2025

Jacqueline Burrell
Jacqueline Burrell, Legal Assistant

COUNTERCLAIM DEFENDANT CLIBER'S
JOINDER OF COUNTERCLAIM
DEFENDANTS MACK AND NARVER'S
RESPONSE TO COUNTERCLAIM PLAINTIFF
KURT BENSHOOF'S MOTIONS - 3
2:23-cv-01829-JNW

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EXHIBIT G

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SEATTLE SCHOOL DISTRICT NO. 1,

Plaintiff,

v.

KURT BENSHOOF,

Defendant.

CASE NO. 2:23-cv-1829

ORDER

KURT BENSHOOF.,

Counter Claimant,

v.

NATHAN L. CLIBER, SARAH E.
SPIERLING MACK, GREGORY C.
NARVER, JESSICA R. OWEN, BLAIR
M. RUSS, and SEATTLE SCHOOL
DISTRICT NO. 1,

Counter Defendants.

1. INTRODUCTION

This matter comes before the Court on three related motions from Defendant and Counter Claimant Kurt Benshoof: (1) motion to vacate the Court's order

1 dismissing Benshoof's counterclaims, Dkt. No. 75; (2) motion for *in camera* review of
2 specific emails between Counterclaim Defendants, Dkt. No. 76; and (3) motion
3 requesting that the Court entertain Benshoof's motion under Federal Civil Rule of
4 Procedure 60(b), Dkt. No. 79. The Court DENIES all three motions for the following
5 reasons.

6 2. BACKGROUND

7 Plaintiff and Counter Defendant Seattle School District No. 1 (the District)
8 filed an action for declaratory relief seeking a judgment from this Court stating that
9 it permissibly withheld certain information from Benshoof under the exceptions
10 found in the Family Education Rights and Privacy Act (FERPA), 20 U.S.C.
11 § 1232(g). Dkt. No. 3 at 1. In response, Benshoof filed a slew of counterclaims
12 against the District and Counter-Defendants King County, Nathan Cliber, Magalie
13 Lerman, Sarah Spierling Mack, Gregory Narver, Jessica Owen, and Blair Russ,
14 including alleged violations of his constitutional rights and various state laws. Dkt.
15 No. 32.

16 On July 19, 2024, the Court dismissed the District's complaint for lack of
17 subject matter jurisdiction. Dkt. No. 67. Then the Court analyzed whether, through
18 his counterclaims, Benshoof established an independent basis for federal
19 jurisdiction under 28 U.S.C. § 1331. Dkt. No. 66. Although Benshoof purported to
20 plead eight counterclaims under 42 U.S.C. § 1983, the Court held that these causes
21 of action failed to state a claim upon which relief may be granted. *Id.* at 16.
22 Accordingly, the Court dismissed Benshoof's counterclaims and lacked an
23 independent basis for jurisdiction to adjudicate Benshoof's state-law claims. *Id.*

1 On August 21, 2024, Benshoof filed a notice of appeal to the Ninth Circuit.
2 Dkt. No. 72. Nearly five months later, on January 15, 2025, Benshoof moved to
3 vacate the Court's dismissal of his counterclaims. Dkt. No. 75. The same day, he
4 moved for in camera review of "specific emails between Counterclaim Defendants
5 and/or their counsel under the crime-fraud exception to a claim of privileged
6 communications." Dkt. No. 76 at 2. After Counterclaim Defendants responded by
7 pointing out that Benshoof divested this Court of jurisdiction to decide his motion to
8 vacate by filing an appeal, Benshoof filed a motion requesting that the Court
9 entertain his Rule 60(b) motion. Dkt. No. 79.

10 3. DISCUSSION

11 3.1 Legal standard.

12 If a party files a Rule 60(b) motion while the case is on appeal, the district
13 court is without jurisdiction to consider it. *Gould v. Mut. Life Ins. Co. of New York*,
14 790 F.2d 769, 772 (9th Cir. 1986) ("Unless the appellate court remands to the
15 district court, the latter is without jurisdiction to consider motions to vacate
16 judgment."). "To seek Rule 60(b) relief, the proper procedure is to ask the district
17 court whether it wishes to entertain the motion, or to grant it, and then move [the
18 Ninth Circuit], if appropriate, for remand of the case." *Scott v. Younger*, 739 F.2d
19 1464, 1466 (9th Cir. 1984) (internal quotation marks omitted).

20 Under Rule 60(b)(3), the court may relieve a party from a final judgment
21 based on "fraud (whether previously called intrinsic or extrinsic),
22 misrepresentation, or misconduct by an opposing party[.]" Fed. R. Civ. P. 60(b)(3).
23 "To prevail, the moving party must prove by clear and convincing evidence that the

1 verdict was obtained through fraud, misrepresentation, or other misconduct and the
2 conduct complained of prevented the losing party from fully and fairly presenting
3 the defense.” *Casey v. Albertson’s Inc*, 362 F.3d 1254, 1260 (9th Cir. 2004) (quoting
4 *De Saracho v. Custom Food Mach., Inc.*, 206 F.3d 874, 880 (9th Cir. 2000)).

5 **3.2 Benshoof fails to show why the Court’s ruling should be vacated.**

6 Benshoof argues the Court should grant his motion to vacate because he has
7 obtained new emails between Narver, Cliber, and Russ. Dkt. No. 79 at 2. Narver,
8 Seattle Public School’s general counsel, emailed Cliber, a private attorney who
9 represented the mother of Benshoof’s child in other suits. *Id.* at 3. The email
10 discusses whether Seattle Public Schools can provide Benshoof his son’s records
11 given a “court order restricting . . . [his] right to know what school his son is
12 presently attending[.]” *Id.*

13 Benshoof objects to the District’s reading of court orders produced during
14 family law proceedings. But this email does not constitute evidence of fraud that
15 would warrant consideration under Rule 60(b)(3).

16 Moreover, the Court dismissed Benshoof’s Section 1983 claims against Cliber
17 and Russ for lack of state action. Dkt. No. 66 at 7-9. It dismissed Benshoof’s claims
18 against Narver based on qualified immunity because Benshoof failed to state a
19 plausible violation of his constitutional rights. *Id.* at 12. Nothing in Benshoof’s
20 motion changes the Court’s analysis. Benshoof is simply trying to rehash his
21 previous arguments.
22
23

1 As to Benshoof's request for *in camera* review of various documents, he has
2 no procedural right to compel documents for his dismissed claims.

3 **4. CONCLUSION**

4 Accordingly, this Court DENIES Benshoof's motions at Dkt. Nos. 75, 76, and
5 79.

6 Dated this 4th day of April, 2025.

7
8 

9 Jamal N. Whitehead
10 United States District Judge
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